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Proceedings. of the Constitutional Convention  
of the State. Nov 15, 1967.

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CONSTITUTIONAL CONVENTION  
OF THE  
STATE OF MARYLAND

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Chamber of the House of Delegates  
State Capitol  
Annapolis, Maryland  
November 15, 1967 - 10:00 a.m.

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HONORABLE H. VERNON ENEY,  
PRESIDENT

Reported by:  
C. J. Hunt  
and  
W. P. Banister



1 THE PRESIDENT: The Sergeant at Arms will clear  
2 the aisles and close the doors.

3 The Convention will please come to order.

4 The invocation this morning will be offered by the  
5 Reverend Carroll Yingling, St. Mark's Methodist Church  
6 Baltimore. Reverend Yingling.

7 REVEREND YINGLING: Let us all pray:

8 O thou eternal God, who creates in us dissatisfaction  
9 tion with the past, and opens our eyes to the possibilities  
10 of the present, and who pushes us to assume responsibility  
11 for the future; guide these men and women elected to the  
12 task of forging the model which will determine the consti-  
13 tutional destiny of this State.

14 Sting them with an awareness of the history-making  
15 process of which they are a part. Fill them with antici-  
16 pation for the lives of tomorrow's citizens. Help them  
17 to toss aside personal axes they are tempted to grind in  
18 favor of the common good. Burden them with a sense of high  
19 regard for the life of every human being in Maryland who  
20 calls himself citizen.

21 Accept this prayer, O God, for the good of the





1 State and for the sake of the future, in the name of  
2 Christ, our Lord. Amen.

3 THE PRESIDENT: Thank you.

4 Roll call.

5 (Whereupon, the roll call was taken.)

6 Has every delegate answered roll call? For what  
7 purpose does Delegate Clagett rise?

8 DELEGATE CLAGETT: Mr. Chairman, a point of per-  
9 sonal privilege.

10 THE PRESIDENT: State your privilege.

11 DELEGATE CLAGETT: Today by the calendar is Novem-  
12 ber 15, 1967. It happens to be also the first day, or  
13 the opening day of the quail and rabbit season in this  
14 State.

15 For the first time in twenty years I find myself  
16 in the position of not being able to personally check those  
17 natural resources. I am only grateful that we have placed  
18 it in the hands of the Constitution and of the State.

19 (Applause.)

20 THE PRESIDENT: Has every delegate answered roll  
21 call? The Clerk will record the roll call.



1           There being a quorum present, the Convention is  
2 in session.

3           The Chair recognizes Delegate Powers, Chairman  
4 of the Committee on Calendar and Agenda.

5           DELEGATE POWERS: Mr. President, I move the adop-  
6 tion of today's Agenda.

7           THE PRESIDENT: Is there a second.

8           (Whereupon, the motion was seconded.)

9           All in favor, signify by saying Aye; contrary,  
10 No. The Ayes have it. It is so ordered. Delegate Boileau.

11          DELEGATE BOILEAU: I think my button has been  
12 exchanged for the Governor's button. It is not working.  
13 I was not recorded on the roll call.

14          THE PRESIDENT: Delegate Boileau will be recorded  
15 as present.

16          Reports of other standing committees?

17          (There was no response.)

18          Formal report of the Committee of the Whole,  
19 Report No. 4. The Clerk will read the record.

20          MR. QUILLEN: Report of the Committee of the Whole,  
21 No. 4. This report covers matters in General Order No. 3:



1           A Report on Committee Recommendation LB-1, Legis-  
2     lative Power, composition of the Legislature, Qualifications  
3     of Legislators, Election of Legislators, Elective Sessions  
4     and Compensation of Legislators.

5           THE PRESIDENT: The Report has heretofore been  
6     referred to the Committee on Style, Drafting and Arrange-  
7     ment.

8           Attached to this Report, in accordance with the  
9     practice, is a copy of Committee Recommendation LB-1,  
10    so marked, with string-outs in italics to show the changes  
11    which were made by amendments.

12           Committee Report R&C-13. The Clerk will read the  
13    report.

14           MR. QUILLEN: Committee Report R&C-13, by the  
15    Committee on Rules, Credentials and Convention Budget,  
16    Alfred L. Scanlan, Chairman; a Report regarding a proposed  
17    amendment to Rule 36 of the Standing Rules of the Conven-  
18    tion.

19           THE PRESIDENT: The Report is referred to the  
20    Committee on Calendar and Agenda.

21           Are there any other reports? Any motions or



1 resolutions?

2 (There was no response.)

3 If not, the Chair recognizes Delegate Powers.

4 DELEGATE POWERS: Mr. President, I move the Con-  
5 vention resolve itself into the Committee of the Whole for  
6 the purpose of considering the orders of the day, in ac-  
7 cordance with the Debate Schedules No. 3 and 4 for control  
8 and limitation of debate.

9 THE PRESIDENT: Is there a second?

10 (Whereupon, the motion was seconded.)

11 All in favor, signify by saying Aye; contrary, No.  
12 The Ayes have it. It is so ordered.

13 (Whereupon, at 10:10 o'clock a.m., the Convention  
14 resolved itself into the Committee of the Whole.)

15 (The mace was removed by the Sergeant at Arms.)

16 THE CHAIRMAN: The Committee of the Whole will  
17 please come to order.

18 We still have under consideration Committee  
19 Recommendation LG-1.

20 At the time the Committee recessed yesterday, we  
21 had acted upon Amendment No. 1 and rejected it; Amendment





1 No. 2 had been submitted and then withdrawn, and it is my  
2 understanding that this morning there would be another  
3 amendment offered. Is Delegate Wagandt here? Do you have  
4 an amendment to 72 or 7.10, Delegate Wagandt?

5 DELEGATE WAGANDT: That is correct. I left it in  
6 the Clerk's office about 9:30 this morning. It should be  
7 printed by now, I should think.

8 THE CHAIRMAN: Are there any other amendments to  
9 Section 72 or 7.10 which haven't been printed?

10 DELEGATE CASE: Mr. Chairman, I left an amendment  
11 with the Clerk's office right after our adjournment last  
12 evening. I assume it has been printed, but I am unable to  
13 find it. Maybe with your greater power, you can find it.

14 THE CHAIRMAN: Delegate Kirkland.

15 DELEGATE KIRKLAND: Mr. Chairman, I have one in  
16 the Clerk's office also on 7.10.

17 THE CHAIRMAN: Delegate Case, I have your amend-  
18 ment. Does the Clerk have copies?

19 MR. QUILLEN: Yes.

20 THE CHAIRMAN: The Clerk will read the amendment.  
21 We will number it No. 2.



1 MR. QUILLEN: Amendment No. 2, to Committee  
2 Recommendation No. LG-1, by Delegate Case, On Page 4,  
3 Section 7.10 Establishment of Multi-County Governmental  
4 Units strike out all of Lines 42 through 45 and insert in  
5 lieu thereof the following:

6 "The General Assembly may provide referenda for  
7 any law establishing, affecting the powers of, or dissolv-  
8 ing popularly elected representative regional governments,  
9 or the creation or alteration of their boundaries."

10 THE CHAIRMAN: Does Delegate Case move the amend-  
11 ment? Is it seconded?

12 DELEGATE CASE: Mr. Chairman, before I move the  
13 amendment, might I say that this is not a copy of the  
14 amendment as I finally drafted it. This was the form in  
15 which it was originally drafted, but after consultation  
16 with the Chairman of the Committee, I made certain ad-  
17 ditional changes in it. This was the way it was first  
18 drafted, but the redraft of it seems not to have arrived.  
19 I gave the redraft to Mr. Martineau, who said it would take  
20 the place of this piece of paper and be on the Floor this  
21 morning. I can tell you exactly what the changes are very



1 easily.

2 THE CHAIRMAN: Let me check and see. Proceed.

3 DELEGATE CASE: If you will look at the piece of  
4 paper that has been marked Amendment No. 4, at Line 8 --

5 THE CHAIRMAN: Amendment No. what? 2.

6 DELEGATE CASE: Amendment No. 2, I am sorry, at Line  
7 8, if you will strike out from that line, "multi-county  
8 government units"; in Line 9, strike out "intergovernmental  
9 authorities", and in Line 11 strike out the words "and  
10 other units of local government", it will then be the  
11 amendment which I offer.

12 THE CHAIRMAN: While we are checking on the where-  
13 abouts of the amendment as reprinted, in the absence of  
14 objection, the Chair will consider the amendment modified  
15 as just indicated by Delegate Case. Strike out of Line 8  
16 the words "multi-county governmental units"; out of Line 9  
17 "intergovernmental authorities", and out of Line 11 "and  
18 other units of local government".

19 Is there any objection? If not, the amendment  
20 will be so modified.

21 Is there a second?



1 (Whereupon, the amendment was seconded.)

2 The Chair recognizes Delegate Case to speak to  
3 the amendment.

4 DELEGATE CASE: Mr. Chairman, in order that everyone  
5 can have clearly before them what the amendment says, I  
6 shall read it. It would say, "The General Assembly may  
7 provide referenda for any law establishing, empowering or  
8 dissolving popularly elected representative regional  
9 governments, or the creation or alteration of their bound-  
10 daries."

11 The purpose of the amendment is to make it clear  
12 that the permissive, and I underline the word "permissive",  
13 the permissive referendum called for in the section will  
14 relate not only to the establishing, empowering or dis-  
15 solving of the government of a popularly elected represen-  
16 tative regional government, but also will apply to the  
17 creation or alteration of their boundaries.

18 It is my understanding from the colloquy I had  
19 with the Chairman of the Commission yesterday, or of the  
20 Committee yesterday, that this was the Committee's  
21 intention. It is my judgment that the section as drawn





1 would not reach this point.

2 I therefore offer the amendment to make it ab-  
3 solutely abundantly clear that the referendum goes, not only  
4 to the establishment of the governing document or charter  
5 of this type of government, but also to the creation and  
6 alteration of the boundaries of this type of government.

7 I call to the attention of the Committee the fact  
8 that probably in substance, assuming that the Committee  
9 Chairman's interpretation of the Committee action was proper  
10 that in substance this amendment does not change what the  
11 Committee in fact intended. I offer the amendment.

12 THE CHAIRMAN: Delegate Case, the amendment that  
13 was corrected has been circulated. Do you have a copy?  
14 The language is rearranged somewhat from what you have  
15 indicated, but I think substantially the same. Would you  
16 look at it and tell us if you will accept that as your  
17 amendment?

18 DELEGATE CASE: Yes. I accept it.

19 THE CHAIRMAN: Will you please destroy the amend-  
20 ment that was marked with a "G" at the top and the amend-  
21 ment consisting of Lines 6 through 12, and Substitute



1 Amendment No. 2, the one that has just Lines 6 through 10.

2 Please also correct the misspelling of the word  
3 "dissolving" in Line 8.

4 Delegate Moser.

5 DELEGATE MOSER: Mr. Chairman, ladies and gentle-  
6 men, the Committee discussed in general terms last night the  
7 suggested change proposed by Amendment No. 2, and I am  
8 authorized to state that the Committee is agreeable to this  
9 amendment.

10 It does make some change in meaning of Section 7.10,  
11 the last sentence. However, I believe it would have to be  
12 voted on.

13 THE CHAIRMAN: Is there any further discussion?  
14 Are you ready for the question? The question arises on  
15 the adoption of Amendment No. 2. A vote Aye is a vote  
16 in favor of the amendment; a vote No is a vote against.  
17 Cast your vote.

18 Has every delegate voted? Does any delegate desire  
19 to change his vote? The Clerk will record the vote.

20 There being 109 votes in the affirmative and none  
21 in the negative, the motion is carried. The amendment is



1       adopted.

2               If you will bear with me a moment, I will try to  
3 find out the status of the amendments of Delegates Wagandt  
4 and Kirkland.

5               DELEGATE SYBERT: Mr. Chairman?

6               THE CHAIRMAN: Delegate Sybert.

7               DELEGATE SYBERT: I gave the office an amendment  
8 about the same time as Delegate Case did last evening, at  
9 about 6 o'clock.

10              THE CHAIRMAN: It is available.

11              DELEGATE SYBERT: I want to offer that.

12              THE CHAIRMAN: Also Delegate Wagandt's amendment is  
13 available.

14              Please distribute Mr. Wagandt's amendment. This  
15 will be Amendment No. 3, by Delegate Wagandt, marked with  
16 the letter "K" at the top. The Clerk will read the amend-  
17 ment.

18              MR. QUILLEN: Amendment No. 3 to Committee Recom-  
19 mendation No. LG-1 by Delegate Wagandt: On Page 4, Section  
20 7.10 Establishment of Multi-County Governmental Units,  
21 strike out all of Lines 37 through 41 and insert in lieu



1       thereof the following:

2               "of multi-county governmental units, including  
3       intergovernmental authorities and popularly elected  
4       representative regional governments, but excluding municipal  
5       corporations."

6               THE CHAIRMAN: Delegate Wagandt offers the amend-  
7       ment. Is it seconded?

8               (Whereupon, the amendment was seconded.)

9               The Chair recognizes Delegate Wagandt to speak to  
10      the amendment. Delegate Wagandt.

11              DELEGATE WAGANDT: This is also a clarifying amend-  
12      ment. You will recall yesterday in the dialogue between  
13      Delegates Case and Moser that the sections as currently  
14      worded could be interpreted to mean that the General Assem-  
15      bly has the power to create an intergovernmental authority  
16      wholly within the bounds of one county.

17              Now, this was not the intent of the Committee on  
18      Local Government, for as you can see, Section 7.10 is headed,  
19      "Multi-County Governments", and this is what this section  
20      is meant to concern.

21              You will also recall that questions were raised





1 about differences in meaning between the words "multi-  
2 county governmental units" and "intergovernmental author-  
3 ities". Therefore, to clarify these terms, we have, or  
4 I have submitted the following phraseology which has just  
5 been read to you.

6 You will note that the term, "and other units  
7 of local government" have been omitted.

8 I feel that this term raises more questions than  
9 it answers, and the way the new wording is phrased, "multi-  
10 county governmental units, including intergovernmental  
11 authorities and popularly elected regional governments"  
12 does not exclude some other form of multi-county governmen-  
13 tal unit which perhaps the General Assembly might con-  
14 ceive in ten, twenty, thirty, fifty years from now. The  
15 term "and civil units" has been omitted because if you  
16 will refer to other sections of the Local Government Article,  
17 you will find that "and civil units" or "civil units"  
18 rather, are wholly within the boundaries of a single county.

19 We did leave in, or I did leave in "municipal  
20 corporations" because a municipal corporation can cross  
21 a county line.



1 THE CHAIRMAN: Is there any further discussion?  
2 Delegate Moser.

3 DELEGATE MOSER: I think, Mr. Chairman, and  
4 ladies and gentlemen of the Convention, that Delegate  
5 Wagandt has clearly stated the purpose of this amendment.

6 The Committee also discussed this. I think that  
7 the colloquy between Delegate Case and myself clarified  
8 certain things for the Committee, and what this does is  
9 make clear that this section, 7.10, relates solely to  
10 multi-county units of government; and therefore, unless  
11 some member of the Committee would disagree with me, I  
12 would say the Committee does not oppose this amendment.

13 THE CHAIRMAN: Any further discussion? Are you  
14 ready for the question? Delegate Hardwicke.

15 DELEGATE HARDWICKE: Mr. Chairman, I wonder if  
16 Delegate Moser would yield for a question.

17 THE CHAIRMAN: Delegate Moser, do you yield for a  
18 question?

19 DELEGATE MOSER: I yield.

20 THE CHAIRMAN: Delegate Hardwicke.

21 DELEGATE HARDWICKE: Under the language of the



1 amendment, you have the general category, multi-county  
2 governmental units, and then you include certain types of  
3 such units, I would assume. Is it your understanding  
4 that the intention is to list all multi-county governmental  
5 units after the word "including", "some multi-county  
6 governmental units" after the word "including", or could  
7 there be other units within this concept not listed?

8 THE CHAIRMAN: Delegate Moser.

9 DELEGATE MOSER: Delegate Hardwicke, I was/pressed hard  
10 when asked whether there could be any others than the  
11 authority and the popularly represented regional govern-  
12 ments yesterday to come up with examples. It is not in-  
13 tended to be exclusive. It is intended to be without  
14 limitation. I can give an example of a multi-county  
15 governmental unit, and I think I gave this same example yes-  
16 terday, which is not an authority and is not a popularly  
17 elected regional government; and that would be the Regional  
18 Planning Council of Baltimore, and this would also apply to  
19 that. That would not be an authority as it is presently  
20 constituted as I understand it.

21 THE CHAIRMAN: Delegate Hardwicke.



1 DELEGATE HARDWICKE: Would the Chairman yield for  
2 one further question?

3 THE CHAIRMAN: Does Delegate Moser yield?

4 DELEGATE MOSER: Yes.

5 THE CHAIRMAN: Delegate Hardwicke.

6 DELEGATE HARDWICKE: So if we accept that amendment,  
7 it will be the intention of this Convention that the Gen-  
8 eral Assembly may provide by law for the establishment,  
9 et cetera, of all multi-county government units.

10 THE CHAIRMAN: Delegate Moser.

11 DELEGATE MOSER: That would be correct, Delegate  
12 Hardwicke.

13 THE CHAIRMAN: Delegate Marion. Do you desire  
14 to speak in favor of or against the amendment?

15 DELEGATE MARION: Mr. Chairman, I desire to ask  
16 one question for clarification of the Committee Chairman  
17 if he will yield for a question.

18 THE CHAIRMAN: Does Delegate Moser yield for a  
19 question?

20 DELEGATE MOSER: I yield.

21 THE CHAIRMAN: Delegate Marion.





1 DELEGATE MARION: Perhaps this was touched on yes-  
2 terday, but I wonder before voting on this amendment whether  
3 I could get a clarification as to the meaning of multi-  
4 county governmental units, specifically as to whether or  
5 not the hyphenated word "multi-county" would encompass units  
6 composed of parts -- well, more than one counties or parts  
7 of counties, or whether it would have to be two or more  
8 entire counties?

9 THE CHAIRMAN: Delegate Moser.

10 DELEGATE MOSER: It could encompass a unit which  
11 would include part of one county and part of another county.

12 THE CHAIRMAN: Delegate Marion.

13 DELEGATE MARION: My concern is because in the  
14 definition section, 7.10, county is defined as "a county"  
15 and region is defined as "a unit" which consists of two or  
16 more counties or parts of counties; but this would encom-  
17 pass a part of one county and a part of another county?

18 DELEGATE MOSER: It could, Mr. Chairman. For  
19 instance, I think the Mass Transit Authority of Baltimore  
20 City is a multi-county unit of government; but it does  
21 encompass, or at least it did in the beginning, all of



1 certain counties.

2 THE CHAIRMAN: Delegate Raley, you rose for what  
3 purpose?

4 (There was no response.)

5 Delegate Clagett, do you desire to debate or ask  
6 a question?

7 DELEGATE CLAGETT: Ask a question of the Chairman.

8 THE CHAIRMAN: Delegate Moser, do you yield for a  
9 question?

10 DELEGATE MOSER: I yield, sir.

11 THE CHAIRMAN: Delegate Clagett.

12 DELEGATE CLAGETT: Referring back to the question  
13 of Delegate Hardwicke a moment ago, Delegate Moser, is it  
14 not contemplated under intergovernmental cooperation,  
15 Section 8.06, that counties, by compact or agreement among  
16 themselves, may be able to establish a multi-county  
17 governmental unit?

18 THE CHAIRMAN: Delegate Moser.

19 DELEGATE MOSER: Yes.

20 THE CHAIRMAN: Delegate Clagett.

21 DELEGATE CLAGETT: And therefore, when Delegate



1 Hardwicke made the statement for the record and for clari-  
2 fication of the record, that all multi-county governmental  
3 units were to be established by the General Assembly, that  
4 would not be entirely correct?

5 THE CHAIRMAN: Delegate Moser.

6 DELEGATE MOSER: I didn't understand his question  
7 to indicate that the General Assembly would have exclusive  
8 power over them, and in answering it, I did not make that  
9 assumption. It could be done under 8.06 also, Delegate  
10 Hardwicke.

11 THE CHAIRMAN: Is there any further discussion?  
12 Are you ready for the question? The question arises on the  
13 adoption of Amendment No. 3. A vote Aye is a vote in favor  
14 of the adoption of the amendment; a vote No is a vote  
15 against. Cast your vote.

16 Has every delegate voted? Does any delegate de-  
17 sire to change his vote? The Clerk will record the vote.

18 There being 116 votes in the affirmative and none  
19 in the negative, the motion is carried. The amendment is  
20 adopted.

21 Delegate Sybert, the Chair has a parliamentary



1 problem. I have now seen the amendment that you have  
2 caused to be prepared. It would be out of order because  
3 of the adoption of the Amendment No. 2 by Delegate Case.  
4 Had I known the amendment was in these terms, I would have  
5 suggested to you at that time that you offer your amend-  
6 ment as a substitute for Delegate Case's amendment. Under  
7 the circumstances, I suggest that you move for a recon-  
8 sideration of the vote by which Amendment No. 2 was adopted  
9 so that you may offer your amendment as a substitute to  
10 Delegate Case's amendment.

11 DELEGATE SYBERT: Mr. Chairman, the Chair may be  
12 under a misapprehension. Is the Chair referring to the  
13 three-line amendment with respect to the word "shall"?

14 THE CHAIRMAN: No, sir. I am referring to  
15 Amendment No. 2 that the General Assembly may provide  
16 referendum for any law establishing and affecting the  
17 powers of or dissolving popularly elected regional govern-  
18 ments or the creation or alteration of their boundaries.

19 As I understand your amendment, you are proposing  
20 a substitute for those precise words?

21 DELEGATE SYBERT: I don't think that is quite





1 right.

2 THE CHAIRMAN: Your amendment is to strike out  
3 Lines 42 through 45.

4 DELEGATE SYBERT: That is correct.

5 THE CHAIRMAN: In order to accomplish your purpose,  
6 I would suggest that you move for a reconsideration of the  
7 vote by which Amendment No. 2 was adopted, so that you may  
8 offer your amendment as a substitute for Amendment No. 2.

9 DELEGATE SYBERT: I so move, Mr. Chairman.

10 The purpose of the amendment --

11 THE CHAIRMAN: Just a second. Is the motion to  
12 reconsider seconded?

13 (Whereupon, the motion was seconded.)

14 Delegate Sybert, you may proceed to speak for the  
15 motion.

16 DELEGATE SYBERT: I move the adoption of the  
17 amendment, which I am now proposing. I don't know whether  
18 it has been distributed or not, but it is ready for  
19 distribution if it has not yet been distributed.

20 THE CHAIRMAN: We are not quite in the position  
21 to offer it. Let me put the motion to reconsider, and



1 then I will recognize you.

2 Is there any discussion on the motion to recon-  
3 sider? Are you ready for the question? A vote Aye is a  
4 vote in favor of the motion to reconsider the vote by  
5 which Amendment No. 2 was adopted. A vote No is a vote  
6 against. All in favor, signify by saying Aye; contrarv,  
7 No. The Ayes seem to have it. The Ayes have it. It is  
8 so ordered.

9 You now have before you Amendment No. 2. The  
10 Chair recognizes Delegate Sybert for the purpose of offer-  
11 ing a substitute amendment. Please mark it Amendment No. 4.  
12 Will the Chief Page please distribute it? The Clerk will  
13 read the amendment.

14 MR. QUILLEN: Amendment No. 4 to Committee Recom-  
15 mendation No. LG-1 by Delegate Sybert: On Page 4, Section  
16 7.10, titled Establishment of Multi-County Governmental  
17 Units, strike out all of Lines 42 through 45 and insert in  
18 lieu thereof the following:

19 Quote, No law providing for the establishment or  
20 alteration of boundaries of multi-county governmental units,  
21 popularly elected representative regional governments, and



1 other units of local government, shall become effective  
2 until submitted to the voters of each county affected and  
3 approved by a majority of those voting on the question in  
4 each such county. Unquote.

5 THE CHAIRMAN: Delegate Sybert moves Amendment  
6 No. 4 as a substitute for Amendment No. 2. Is his motion  
7 seconded?

8 (Whereupon, the motion was seconded.)

9 The motion is seconded. The Chair recognizes  
10 Delegate Sybert to speak to the Amendment No. 4.

11 DELEGATE SYBERT: Mr. Chairman, in view of the  
12 adoption a few minutes ago of Delegate Wagandt's amend-  
13 ment, I think I have to cut out or delete a few words in  
14 mind in order to make it conform to Delegate Wagandt's  
15 amendment.

16 The words that should be stricken appear in my  
17 amendment on Lines 8 to 10.

18 THE CHAIRMAN: What words do you strike?

19 DELEGATE SYBERT: In Lines 8 to 10, "popularly  
20 elected representative regional governments, and other units  
21 of local government".



1           That I think is necessary in view of the adoption  
2 of Delegate Wagandt's amendment, which clearly shows that  
3 intergovernmental authority and popularly elected regional  
4 government are included in the term "multi-county govern-  
5 mental units".

6           THE CHAIRMAN: In the absence of objection the  
7 Chair will consider Amendment 4 modified, Line 8, strike out  
8 "popularly represented", line 9, and in 10, "other units of  
9 local government. Is there any objection? Delegate Bur-  
10 dette?

11           DELEGATE BURDETTE: I do not want to object, but  
12 I do not have the language, Mr. Chairman, and I could not  
13 vote on it until we get it more slowly.

14           THE CHAIRMAN: In Line 8, strike the words "pop-  
15 ularly elected"; strike out all of Line 9, and in Line 10,  
16 strike the words "other units of local government".

17           Is there any objection? If not, the modification  
18 will be considered as having been accepted. The Chair recog-  
19 nizes Delegate Sybert to speak for the amendment.

20           DELEGATE SYBERT: Mr. Chairman, I am not going to  
21 spend much time in explaining this amendment. It would





1 simply serve to make mandatory, as now written, any law  
2 providing for the establishment or alteration of boundaries  
3 of multi-county governmental units. It also spells out the  
4 governmental units in which a referendum would have to be  
5 had by words in Lines 11 and 14; "no such law shall become  
6 effective until submitted to the voters of each county  
7 affected and approved by a majority of those voting on the  
8 question in each such county."

9 In line with what Delegate Carson pointed out  
10 yesterday, the Section 7.10, as written by the Committee,  
11 and as amended up to this point, would permit the legis-  
12 lature to provide for any multi-county governmental unit with-  
13 out any action on the part of the counties affected.

14 That would mean as a practical thing, Mr. Chair-  
15 man, that the legislature, that is, a majority of the  
16 members of the legislature in each house could, by a  
17 majority vote, provide for any type of intergovernmental  
18 unit and as we have already heard, any such unit could  
19 be invested with almost all of the powers of any county.

20 In effect, even though a county were not actually  
21 and completely destroyed by such action, it could virtually



1 be destroyed by having by a mere majority vote of the  
2 legislature almost all of its governmental powers taken  
3 away from it.

4 Now, how would such a majority be obtained in the  
5 legislature of each house?

6 Any, or Baltimore City to be specific, could join  
7 with one or possibly two of the larger counties and have  
8 a majority of the legislature. It could, while there  
9 may not be any logrolling in the legislature, it is pos-  
10 sible in the future that Baltimore City and one or two of  
11 the larger counties could join forces in order to set up  
12 any type of bi-county or tri-county governmental unit,  
13 take away, many, almost all of the powers of one or more  
14 county, very probably nearby counties in turn for some  
15 such delegate maybe in another part of the State.

16 I submit, if your Honor please, that the counties  
17 should have some protection from such action. They should  
18 not be forced to join unwillingly within any regional  
19 government that the people of that county do not want and  
20 as a matter of fact may be violently opposed to.

21 I think that explains the intent and the purpose



1 of that amendment. I am not wedded to the matter of re-  
2 quiring a referendum by the voters of these counties,  
3 but would be willing to submit, or to substitute in place  
4 of such a referendum the words "such a law shall not be  
5 effective until approved by the governing bodies of each  
6 county affected. "

7 That is an alternative possibility. I submit,  
8 therefore, Mr. Chairman, that this amendment should be  
9 adopted by this Convention.

10 THE CHAIRMAN: The Chair recognizes Delegate  
11 Moser to speak in opposition to the amendment.

12 DELEGATE MOSER: Mr. Chairman and ladies and  
13 gentlemen of the Committee, this amendment goes much,  
14 much further than the one that yesterday was defeated by  
15 a 90 to 20 vote; and I rise in opposition to the  
16 amendment.

17 With all due respect, what it does is to place  
18 a veto over action of the General Assembly with respect  
19 to multi-county problems in the hands of either, well, of  
20 the counties, whether it is a county governmental body or  
21 whether it is the voters in the county.



1           It would affect a situation as simple as this: It  
2 requires a referendum in a case as simple as this: The  
3 establishment of a regional planning council for the  
4 Baltimore Region.

5           In effect, as I said, it would permit a veto of  
6 this at the local level. As I said yesterday, and I won't  
7 repeat it, we came down here to strengthen the legislature.  
8 These are our popularly elected representatives, and this  
9 could hogtie the legislature.

10           Under the present Constitution, the General Assem-  
11 bly can create these multi-county units.

12           Now, today, more than ever, problems of the  
13 State go beyond county boundaries. I don't have to detail  
14 all the ones that do. This is true of the Eastern Shore,  
15 of Southern Maryland and Western Maryland. It is not  
16 just limited to the Baltimore and Washington areas only.  
17 The General Assembly have to have or has to have the  
18 power to provide for a genesis such as the Regional Plan-  
19 ning Council, and there should not, I submit, be any re-  
20 quirement that these be submitted to referenda, as the  
21 amendment suggests.





1 I think that it would be a real step backward  
2 to put this inflexibility into the new Constitution that  
3 we are drafting, and I respectfully request the Committee  
4 to vote No on this amendment.

5 THE CHAIRMAN: Does any delegate desire to speak  
6 in favor of the amendment? Delegate Fornos.

7 DELEGATE FORNOS: Is a question in order for the  
8 Chairman of the Local Government Committee on this amendment?

9 THE CHAIRMAN: Let me find out first if anyone  
10 desires to speak in favor.

11 DELEGATE FORNOS: It is related to that.

12 THE CHAIRMAN: Just a second. Delegate Pullen.

13 DELEGATE PULLEN: Mr. Chairman, I think I can  
14 speak in favor of this for the following reasons: I think  
15 it would simply solve all the consequences of the principle  
16 and avoid the consequences by denying the principle.

17 I think we are dealing here with something that  
18 is supposedly a local matter when in reality it is a  
19 State matter. If it is of such consequence that the State  
20 legislature has to recognize a different agency, then I think  
21 it becomes possibly a function of the State and should be



1 removed from the local government, and therefore I think  
2 that if we are going to set up a new form of government,  
3 such as this contemplates, then I think the people ought  
4 to have a right to take part in it. I think it transcends  
5 the local situation as expressed by the Committee.

6 THE CHAIRMAN: Delegate Moser, do you yield to a  
7 question from Delegate Fornos?

8 DELEGATE MOSER: I yield, Mr. Chairman.

9 THE CHAIRMAN: Delegate Fornos.

10 DELEGATE FORNOS: Delegate Moser, the two most  
11 vivid examples of regional government in North America, I  
12 believe, are Dade County and Toronto. Would you not think  
13 that those were model regional governments?

14 DELEGATE MOSER: I wouldn't, Delegate Fornos, say  
15 that they are models. Some people call them regional  
16 governments, yes.

17 DELEGATE FORNOS: I think we are playing on words,  
18 but both of those metropolitan governments were overwhelm-  
19 ingly established by the vote of the people who were to  
20 be part of the regional government, and they were not re-  
21 jected when they were placed on the referenda, when Dade



1 County and when the City of Miami voted to give up most of  
2 its municipal rule to the Dade County governments, the  
3 people of that City voted overwhelmingly for the proposal.

4 THE CHAIRMAN: Are you going to ask a question of  
5 Delegate Mosor, Delegate Fornos?

6 DELEGATE FORNOS: Since he chose to make debate  
7 out of it, I just retorted.

8 THE CHAIRMAN: Either ask your question or indi-  
9 cate whether you wish to speak on the question.

10 DELEGATE FORNOS: I wish to speak in favor of the  
11 amendment.

12 THE CHAIRMAN: Let me see if anyone desires to  
13 speak in opposition. Delegate Clagett.

14 DELEGATE CLAGETT: Mr. Chairman, I would like to  
15 suggest in opposition to the amendment that the protection  
16 of the boundaries of the counties is preserved in Section  
17 7.01, where it specifically provides that no law altering  
18 the boundaries of a county shall become effective until  
19 submitted to the voters of each county affected and  
20 approved by a majority of those voting on the question in  
21 such each county. Therefore, the integrity of the boundaries





1 of counties is preserved by that section.

2 Likewise, with respect to this suggested amend-  
3 ment, I point out to you that with respect to the Washing-  
4 ton Suburban Sanitary Commission, or the National Capital  
5 Park and Planning Commission, both multi-county units, a  
6 change of the areas of either of those two units would  
7 fall within the amendment as suggested by Delegate Sybert,  
8 and would have to go through this cumbersome laborious,  
9 time-consuming and completely unnecessary referenda pro-  
10 cedure.

11 I therefore suggest to you that as Delegate Moser,  
12 our Chairman, has stated, some degree of trust ought to be  
13 placed in the General Assembly to provide adequately and  
14 properly and not be hamstrung or shackled by unnecessary  
15 restrictions.

16 THE CHAIRMAN: The Chair recognizes Delegate For-  
17 nos to speak in favor of the amendment.

18 DELEGATE FORNOS: Mr. Chairman, fellow delegates,  
19 it disturbs me that there is permeating through this hall  
20 a very great aura of distrust to the people of this State.  
21 We are talking about writing a constitution which will





1 serve the people of this State, and yet at the same time  
2 we are saying, But let's not let them decide major  
3 decisions that affect such things as sewerage, transporta-  
4 tion, rapid transit systems, et cetera. We want to, on one  
5 hand, strengthen the State government, and yet on the other  
6 hand, we want to destroy the people's right to participate  
7 in the government. When we take a look at the fact that  
8 only 61 per cent of the people of this State are regis-  
9 tered, we can very readily see that past known involvement  
10 by the people has caused apathy towards governmental pro-  
11 cess. I think we ought to strengthen the power of the  
12 people and not deprive them of the very important vote in  
13 an area which they will choose wisely, and not circumvent  
14 the will of the legislature, but rather if the legislature  
15 adopts a program which is for the benefit of the people  
16 of that area, will adopt it overwhelmingly at the polls.

17 All I say is, give them an opportunity to speak,  
18 so that they may continue to participate in our government.

19 THE CHAIRMAN: Any delegate desire to speak in  
20 opposition? The Chair recognizes Delegate Gallagher.

21 DELEGATE GALLAGHER: Mr. Chairman, ladies and



1 gentlemen of the Convention, I rise to oppose the amendment.  
2 As I read it, it does a great deal more than it would in-  
3 dicate on its face. It says, "no law providing for the  
4 establishment or alteration of boundaries".

5 Now, I submit that this, in effect, means that  
6 no law providing for the creation of multi-governmental  
7 units shall become effective until submitted, et cetera,  
8 because you cannot establish a multi-county governmental  
9 unit without indicating what the boundaries are; so it  
10 seems to me, therefore, that one must assume, therefore,  
11 that this is much more than a question of getting to the  
12 geography of a multi-governmental unit, but to the existence  
13 or the proposed existence of the multi-governmental unit;  
14 so in effect, therefore, it would seem to me that this  
15 would require that there be no law for the creation of a  
16 multi-county governmental unit without the referendum.

17 Now, it occurs to me, as I read this, that one  
18 could have a multi-county governmental unit which only  
19 involved a part of one county, and that every voter in the  
20 part of that county which would be affected by the unit  
21 could vote in favor of it, and yet because the entire



1 county involved is participating in the referendum pro-  
2 cedure, the rest of the county could override the unanimous  
3 will of the part of the county which was to be covered by  
4 the multi-county governmental unit; so that in effect,  
5 therefore, one portion of a county could completely thwart  
6 and make impossible what the people in another area wanted  
7 unanimously, and without any dissent whatsoever.

8 I suggest in opposing this amendment that it is not  
9 a question of distrusting the people, because as I would  
10 understand the law, the people would still have the right  
11 to petition the law to referendum. This merely, it seems  
12 to me, would make mandatory every attempt to create a  
13 multi-county government, every attempt to change its bound-  
14 daries including, I might say, making it smaller as well  
15 as larger.

16 THE CHAIRMAN: Delegate Gallagher, you have one-  
17 half minute.

18 DELEGATE GALLAGHER: And consequently, I don't feel  
19 that this is anything more than harassment or additional  
20 obstacle to the creation of these units.

21 I think I detect throughout this debate a fear of



1 the large city government of Baltimore and a general  
2 distrust of where its tenacles may go. I don't think,  
3 however, that one need to go to this extreme in order  
4 to keep the City of Baltimore in check, if that be the  
5 idea.

6 THE CHAIRMAN: Any other delegate desire to  
7 speak in favor of the amendment? Delegate Weidemeyer.

8 DELEGATE WEIDEMEYER: Mr. President, members  
9 of the Convention, I rise in favor of this amendment.  
10 It provides for a referendum for any of these bills.

11 It is true where county lines are being changed  
12 under Section 707, that it must be submitted to the  
13 people, but we do know this. That under this local govern-  
14 ment set up that we have here in this recommendation, all  
15 the power not restricted to the local subdivision by the  
16 Constitution resides in those local governing bodies.

17 We know also that regional governments and  
18 multi-government set-ups can erode time and time again.  
19 Reserve powers to the local subdivisions and if these  
20 reserve powers are to be eroded by multi-government laws,  
21 then you are allowing the legislature to come in and erode







1 at the very reserve powers of these local subdivisions.

2 It is true that any law passed covering more  
3 than one county would be considered statewide in effect,  
4 but, Mr. President, the other day, by our action, we have  
5 almost made referendum prohibitive, and so it is necessary  
6 that there be a forced referendum in order to give these  
7 people in these areas an opportunity to be heard when the  
8 very powers of their local government structures are  
9 being eroded by acts of the legislature.

10 THE CHAIRMAN: The Chair recognizes Delegate  
11 Bard to speak in opposition to the amendment.

12 DELEGATE BARD: Mr. Chairman, my statement has  
13 already been made.

14 THE CHAIRMAN: The Chair recognizes Delegate  
15 Singer on speech in opposition to the amendment, I am  
16 sorry, Delegate Needle.

17 DELEGATE NEEDLE: Mr. Chairman, I think the  
18 reasons for opposing this amendment were very aptly  
19 stated, yes, sir, and the results were reflected in a vote  
20 of 90 against the amendment and 20 in favor.

21 This amendment goes, as Delegate loser has



1 indicated, much further than yesterday's proposed  
2 amendment, which was so soundly defeated and I suggest that  
3 it be defeated again. However, I think there is one thing  
4 inherent in this amendment which Delegate Sybert probably  
5 did not intend, which I find somewhat attractive but  
6 will not support nonetheless, and that is that it  
7 eliminates even the permissive referendum on the  
8 establishment of a popularly elected regional government.

9 I don't think that he intended that. As I  
10 have said before I prefer for there to be no referendum  
11 with regard to establishment of such regional government  
12 but I nonetheless will support the committee recommendation  
13 suggested in defeat of this amendment.

14 THE CHAIRMAN: The Chair recognizes E. Churchill  
15 Murray to speak in favor of the amendment.

16 DELEGATE E. CHURCHILL MURRAY: Mr. President,  
17 this entire subject from the beginning has been a rather  
18 delicate one. I think that we knew before we came here that  
19 it would necessarily be so. We certainly must have known  
20 before we came here that the increasing problems of the  
21 state, the increasing population of the state, would



1 necessarily bring this question to the floor, and  
2 whether there were any convention or not, the question  
3 would exist. The question will intensify.

4 This certainly does not speak to the point of  
5 the boundary, primarily of the boundary of this area.  
6 It speaks, I think, to the question of what authority  
7 will be given to the regional government; and as  
8 Delegate Sybert has pointed out, it doesn't seem to me  
9 yet to be clear, yet to be positive that this authority  
10 cannot go to the point of so hampering that you would  
11 virtually destroy the local county government.

12 I am sorry that anyone brought up the question  
13 as between city and the counties.

14 This does exist perhaps but certainly we should  
15 get as far from it as possible. Certainly we are going  
16 to have to for the survival of each to look at this  
17 entire situation on a far broader basis than that.

18 On the other hand, I don't think that we should  
19 blindly accept the proposition, and I have no doubt that  
20 it can be so worded that the interests of the counties can  
21 be protected without being jeopardized.



1 Thank you, sir.

2 THE CHAIRMAN: Any other delegate desire to speak  
3 in opposition to the amendment? Delegate Hanson?

4 DELEGATE HANSON: Mr.Chairman, I rise to oppose  
5 this amendment. Many of the reasons for this opposition  
6 have already been stated but I think there are a few  
7 things that are very important to emphasize. One is the  
8 point made by Delegate Clagett, that this amendment, if  
9 adopted, would make it impossible, without having a  
10 referendum in both counties, for the boundaries of the  
11 Suburban Sanitary Commission or the Maryland National  
12 Capital Park and Planning Commission to be extended.  
13 It would make it possible for an extension of those  
14 boundaries in Prince Georges County to be vetoed by the  
15 voters in Montgomery County. One of the most difficult  
16 problems that has existed in developing systems of govern-  
17 ment for regions in the United States has been the  
18 ability of one unit of government to veto the point of  
19 view favored by all the surrounding units of government.  
20 This has been the case in St. Louis County. It was the  
21





1 case for a long time in the Davidson-Nashville area  
2 which eventually overcame the referendum problem. It was the  
3 case for a long time in Dade County. As to Toronto,  
4 in Canada, the metropolitan organization in Toronto was  
5 formed by the action of the provincial legislature, and  
6 not on the basis of a referendum of the people.

7 That point aside, I think the central  
8 question here is whether the voters in one county should  
9 have the right to veto the wishes of the General Assembly  
10 when that law can in itself be referred to the people under  
11 the general referendum provisions, which are provided for  
12 in the Constitution, in the section of the Constitution  
13 which we have already adopted. This proposal does go much  
14 farther than the one which was defeated yesterday. It  
15 should be defeated for all of those reasons, and for the  
16 additional reasons that have been stated here this morning.

17 THE CHAIRMAN: Before proceeding with debate,  
18 the Chair recognizes the Honorary President for the purpose  
19 of making an announcement.

20 DELEGATE TAWES: Thank you very much, Mr.  
21 President. I should like to take this opportunity to ask

Maryland Room  
University of Maryland Library  
College Park, Md.

1 the members of this Convention to welcome here in the  
2 galleries of the State House today 175 members of the  
3 Civic Classes of Easton Middle School of Easton, Maryland.  
4 They are visiting the Convention today with Miss Linda  
5 Herring and other members of the faculty of the Easton  
6 Middle School. I should like for us to give them a warm  
7 welcome. (Applause.)

8 THE CHAIRMAN: The Chair also desires to announce  
9 that we are on order to have present with us today 60  
10 members of the American Association of University Women,  
11 Maryland Division, in company with their President, Mrs.  
12 Sherman Ross. Delegates Lucille Maurer and Catherine  
13 Beachley are members of this chapter. Delighted to have  
14 them with us.

15 The Chair recognizes Delegate Anderson.

16 DELEGATE ANDERSON: Mr. Chairman, I rise to  
17 speak briefly in favor of the amendment.

18 As is well known, we in Anne Arundel County  
19 border on the largest municipality in the state. We are  
20 not objecting to that, and we feel very close to the  
21 metropolitan City of Baltimore, but at the same time it is



1 a matter of great importance to the counties that border  
2 on the city that nothing is done which they do not want  
3 to be done, and at the same time, everything ought to be  
4 done that they want done, and there are some things which  
5 we recognize are of mutual interest, and I am sure we would  
6 not oppose them. However, in view of the confused state  
7 of the referendum provision of the Constitution as it now  
8 exists, I feel that this is a provision that all of us  
9 should support.

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1 THE CHAIRMAN: The Chair recognizes Delegate  
2 Grant to speak in opposition to the amendment.

3 DELEGATE GRANT: Of all the delegates here I  
4 ought to distrust the General Assembly more than anyone  
5 else, since we don't have a representative here, and it  
6 would appear I would like to hogtie the General Assembly  
7 so they can't pull these kinds of things.

8 However, if this would be my purpose, this  
9 amendment would be utterly futile to do so. You forget,  
10 the State has plenary power, and it is simply a matter of  
11 this: If you forbid and tie up the General Assembly  
12 so they can't do it on a regional basis, they will simply  
13 do it on a statewide basis, and if I have got to take  
14 something I don't want, I would a lot rather go down to  
15 Hagerstown or someplace near me and wrestle with the  
16 regional government than I would to have to go down to  
17 Baltimore and wrestle with the whole State.

18 THE CHAIRMAN: Any other delegate desire to  
19 speak in favor of the amendment?

20 Delegate Linton.  
21





1 DELEGATE LINTON: Mr. Chairman, I believe  
2 if we examine section 402 we provide the merger, dissolu-  
3 tion, alteration of boundaries is subject to referendum,  
4 and then if we apply the Wagandt amendment, we have  
5 provided for intergovernmental authorities. I believe we  
6 are creating a situation that would require clarification,  
7 if we do not adopt an amendment which is consistent and  
8 provide for referendum for the changing of boundaries.

9 This amendment refers strictly to boundaries  
10 of governmental units, multi-county governmental units.  
11 It is not talking about the authorities that may operate  
12 within those. It is talking about the boundaries of them, and  
13 I believe they would be subject to referendum under this  
14 language of section 7.02; so therefore I am in favor of  
15 the amendment.

16 THE CHAIRMAN: The Chair recognizes Delegate  
17 Chabot to speak in opposition to the amendment.

18 DELEGATE CHABOT: Mr. Chairman, at the present  
19 time Howard County is quite concerned with the transportation  
20 problems of the Washington Metropolitan area, and I am  
21 sure that they are even more concerned with the transportation



1 problems of the Baltimore Metropolitan area.

2 The committee's report and the Case amendment  
3 would have permitted the General Assembly to allow the  
4 voters of Howard County to participate in decisions with  
5 regard to any multi-county unit that dealt with these trans-  
6 portation areas, these transportation problems. Unfor-  
7 tunately, the Sybert amendment would exclude Howard  
8 County from having a voice, unless the boundaries were  
9 extended to some extent within Howard County, notwithstand-  
10 ing Howard County's vital interest.

11 The committee report would have permitted the  
12 General Assembly to say, well, we have previously established  
13 such and such an agency, but we are now giving it such a  
14 tremendous increase in powers that we feel it appropriate  
15 that the people in the area affected, or the area that has  
16 an interest in it, have another crack at saying whether or  
17 not they are willing to have these powers extended.

18 The Sybert amendment would forbid the General  
19 Assembly to do this. The Sybert amendment would have  
20 the effect, I am afraid, of not letting the people speak.  
21 Therefore, I oppose the Sybert amendment.



1 THE CHAIRMAN: Any further discussion?

2 Are you ready for the question? The Clerk  
3 will sound the quorum bell.

4 The question arises on the adoption of Amendment  
5 No. 4 as a substitute for Amendment No. 2. A vote Aye is  
6 a vote to substitute Amendment No. 4 for Amendment No. 2.  
7 A vote No is a vote against.

8 If the motion is carried, Amendment No. 4 will  
9 be substituted for Amendment No. 2, and then be submitted  
10 to your vote. If the motion fails, you will have before  
11 you Amendment No. 2.

12 A vote Aye is a vote in favor of the substitu-  
13 tion of Amendment No. 4; a vote No, a vote against. Cast  
14 your vote.

15 Have all delegates voted? Does any delegate  
16 desire to change his vote?

17 The Clerk will record the vote.

18 There being 38 votes in the affirmative and  
19 82 in the negative, the motion is lost.

20 The question arises on the adoption of amend-  
21 ment 2. Is there any further discussion? Are you ready



1 for the question? A vote Aye is a vote in favor of the  
2 adoption of Amendment No. 2. A vote No is a vote against  
3 the amendment.

4 Roll call vote. Cast your vote.

5 Has every delegate voted? Does any delegate  
6 desire to change his vote? The Clerk will record the vote.

7 There being 123 votes in the affirmative and  
8 none in the negative, the motion is adopted and the  
9 amendment is carried.

10 We still have for consideration section 7.02  
11 and 7.10, open for amendment. Do you have any further  
12 amendments?

13 Delegate Kirkland, is your amendment printed,  
14 do you know?

15 DELEGATE KIRKLAND: That is what I was going  
16 to ask you, sir.

17 THE CHAIRMAN: I will take a moment to find  
18 out.

19 Delegate Kirkland, did you have two amendments,  
20 by any chance?

21 DELEGATE KIRKLAND: Just one, sir.





1 THE CHAIRMAN: Delegate Winslow.

2 DELEGATE WINSLOW: Yes, Mr. Chairman.

3 THE CHAIRMAN: You had offered an amendment  
4 yesterday which upon request of Delegate Case you had with-  
5 drawn. Do you desire to resubmit that amendment at any  
6 point?

7 DELEGATE WINSLOW: I do not, sir.

8 THE CHAIRMAN: You do not?

9 DELEGATE WINSLOW: I do not intend to submit it.

10 THE CHAIRMAN: Very well.

11 The Chair understands that the amendment wasn't  
12 received by Dr. Phillips until ten or five or ten minutes  
13 ago, and is being printed. In the absence of objection  
14 we will proceed to the consideration of any other amendments  
15 of section 7.02 or 7.10.

16 Are there any other amendments intended to be  
17 offered to section 7.02 or 7.10?

18 In the absence of objection, in order to save  
19 time, the Chair will proceed to a consideration of other  
20 sections and will return to section 7.10 as soon as Delegate  
21 Kirkland's amendment is printed and received.



1           Section 7.03 is open for amendment. Are there  
2 any amendments to section 7.03?

3           Section 7.04 is open to amendment. Are there  
4 any amendments to section 7.04?

5           (No response.)

6           THE CHAIRMAN: The Chair hears none.

7           Section 7.05 is open to amendment. Are there  
8 any amendments to section 7.05?

9           (No response.)

10          THE CHAIRMAN: Section 7.07 -- just a second.

11          Delegate Needle, do you have an amendment?

12          DELEGATE NEEDLE: I have an amendment to section  
13 7.05, amendment A.

14          THE CHAIRMAN: We will reserve number 5 for  
15 Delegate Kirkland's amendment. We will number this as  
16 Amendment No. 6.

17          The Clerk will read the amendment.

18          This amendment is on one page, but there is  
19 attached to it a memorandum.

20          MR. QUILLEN: Amendment No. 6 to Committee  
21 Recommendation No. LG-1, by Delegate Needle:



1                   On page 3, section 7.05, Powers of Counties,  
2 line 14, strike out the words "and power to tax"; and

3                   On page 3, line 25, after the period, add the  
4 following:

5                   "The governing body of a county may also re-  
6 quest the authority to exercise any taxing power  
7 by a resolution submitted to the General Assembly before  
8 the beginning of a regular session in accordance with the  
9 procedures established by law. The county may exercise  
10 this power if, by the end of the regular session, the General  
11 Assembly has not rejected the resolution."

12                   THE CHAIRMAN: Is the amendment seconded?  
13 Does anyone second the amendment?

14                   DELEGATE CLAGETT: Second.

15                   THE CHAIRMAN: Delegate Clagett seconds the  
16 amendment.

17                   Delegate Needle.

18                   DELEGATE NEEDLE: Mr. Chairman, I would like  
19 to take this opportunity, first to commend the Chairman  
20 of the Local Government Committee and his staff  
21 and the entire committee for a job which obviously has



1       been very well done.

2               Delegate Moser has positively amazed me with  
3       the diligence with which he has approached this task.  
4       The committee has worked long and hard hours. We had ob-  
5       viously a very difficult task before us. We met late into  
6       the evening on many occasions. Delegate Moser would go  
7       home at very unreasonable hours and return the next  
8       morning with considerable work done while other members  
9       of the committee slept.

10              With that background, I indicate that I am  
11       hesitate to offer this amendment. However, I am firmly  
12       convinced that this raises a very crucial issue before  
13       this Convention, and that is, the powers of the local sub-  
14       divisions to tax.

15              I am firmly committed to the concept of shared  
16       powers as expressed in section 7.05 of the committee  
17       recommendation. I feel that this is, as a matter of  
18       fact, the key recommendation of the Local Government Com-  
19       mittee, and will do more than any other recommendation to  
20       make the counties more viable and responsive in order that  
21       they may deal with local matters at the local level.





1           However, there is an exception to the shared  
2 powers concept of the counties, not only for judicial  
3 matters, but for tax matters as well.

4           Delegates Case and Raley introduced proposal  
5 number 386, which makes an exception of the tax power from  
6 the shared powers concept, and appeared on several instances  
7 before the full committee and on several occasions with  
8 the Subcommittee of the Local Government Committee, and  
9 convinced the Local Government Committee that the General  
10 Assembly should have plenary power over the tax power  
11 of the State; and that if the local subdivision shall have  
12 any tax power, it shall be delegated to them by the General  
13 Assembly, and I will submit to the wisdom of that proposition.

14           However, my amendment strikes a compromise be-  
15 tween the Constitutional Convention Commission draft of  
16 this particular section, which does not make any exception  
17 of the tax power from the shared powers. This compromise  
18 proposal retains in the counties the all important initiative,  
19 which is most consistent with the shared powers concept of  
20 local taxation. It provides that the counties shall come  
21 to the General Assembly with a delegate documented resolution



1 adopted by the County Council, and request the General  
2 Assembly grant to it the new local tax power requested.

3 This is a workable method by which the counties  
4 can approach the General Assembly. It provides a  
5 clearer and more desirable method for introducing such tax  
6 legislation of the General Assembly.

7 At present there are nine counties, and in  
8 the future, with a smaller and reapportioned General Assembly  
9 as we have already provided for, there will be even more  
10 than nine counties without their individual representative  
11 here in Annapolis.

12 It will be difficult for those counties, if  
13 not impossible, to attain from the General Assembly  
14 those tax powers necessary to fund the more extensive  
15 and new functions and services which we hope that the  
16 counties will indeed extend to their citizens by virtue of  
17 this local government article, and that is the thrust of  
18 this local government article.

19 In addition to which, this compromise proposal  
20 will provide considerable disability and responsibility at  
21 the local level for the imposition of local taxes.



1 The people of the county will have an opportunity to  
2 object to the imposition of a new tax at the county coun-  
3 cil level, before the General Assembly is asked to pass  
4 upon the question.

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1           The only expert witnesses presented to the Com-  
2       mittee on Local Government on this particular question  
3       were Dr. Paul Cooper, the Director of the Fiscal Research  
4       Corporation and Mr. Albert Ward, Assessor of the Depart-  
5       ment of Taxes and Assessments. Both came before our  
6       committee prepared to say that the tax powers should be  
7       clearly exempted from the shared powers concept, and that  
8       the General Assembly should delegate tax powers to the  
9       counties.

10           When told of this compromise proposal, and all  
11       of its ramifications, which are set out in the memorandum  
12       attached to this amendment, Dr. Cooper and Mr. Ward  
13       indicated that they not only considered this an acceptable  
14       proposal, but more desirable than that which the committee  
15       has recommended.

16           They recognized the advantage of retaining in  
17       the counties the initiative in this area, and the disability  
18       and responsibility at the local level of imposing these  
19       taxes, in addition to which there are many local taxes,  
20       which as a matter of fact are collected by the state on  
21       behalf of the local subdivisions, and this procedure





1 would indicate to the citizens of the county who is  
2 actually imposing that tax.

3 I should say that my proposal also retains the  
4 grandfather clause and the selective withdrawal clause,  
5 which is retained in the committee recommendation.

6 This compromise proposal protects the very thing  
7 that Delegate Proposal 387 seeks to protect, and that is  
8 the plenary power in the General Assembly over local tax  
9 matters, to be certain that they will not be detrimental  
10 to the surrounding jurisdictions, or to business and  
11 industry or to the excellent credit rating of this state.

12 I therefore submit to this body that this compro-  
13 mise proposal does all which the committee seeks for  
14 it to do, but retains the initiative, advisability and  
15 the workableness of the shared powers concept with the  
16 counties.

17 THE CHAIRMAN: The Chair recognizes Delegate  
18 Moser to speak in opposition to the amendment.

19 DELEGATE MOSER: Mr. Chairman, ladies and  
20 gentlemen, I rise to oppose the amendment proposed by  
21 Delegate Needle.



1           The committee, as all of you are aware, spent  
2 a great deal of time on this question of how the power  
3 to tax should be handled.

4           The final vote in favor of continuing the ex-  
5 press grant of powers as Committee Recommendation 1 does  
6 -- this is in 7.05 of the Committee Recommendation -- was  
7 adopted by a ten to seven vote, with two abstentions.

8           This, and I will read it, I am referring now  
9 to lines 13 through 25, on page 3 of the Committee Recom-  
10 mendation, a county may exercise any power other than  
11 judicial power, and power to tax, and then in the last  
12 sentence, beginning at line 20, a county may exercise  
13 such tax powers as may be granted to it by law, and may  
14 continue to exercise any tax powers granted to it prior  
15 to the effective date of this article, unless any of  
16 these powers is subsequently denied to it by law.

17           This is what the committee chose, after several  
18 days of consideration.

19           I think that, while there may be no harm in  
20 Delegate Needle's proposal, it is unnecessarily compli-  
21 cated and something that we do not need in the new



1 Constitution, and I therefore hope that this committee  
2 will vote against that amendment.

3 THE CHAIRMAN: Any other delegate desire to  
4 speak in favor?

5 Delegate Marvin Smith.

6 DELEGATE M. SMITH: Mr. Chairman, if Delegate  
7 Needle would yield for a question, I may have a question.

8 THE CHAIRMAN: Does Delegate Needle yield to  
9 a question?

10 DELEGATE NEEDLE: Yes.

11 DELEGATE M. SMITH: I have some difficulty with  
12 your language, the General Assembly has not rejected the  
13 resolution. How would you define this? Is this rejection  
14 by a single committee in one House, a rejection by a  
15 committee in each of both Houses, a rejection by one House,  
16 or shall we say an affirmative rejection by each House  
17 of the General Assembly?

18 DELEGATE NEEDLE: As it is written, it would  
19 mean that if the power to tax was not granted by the  
20 General Assembly, then the local subdivision would have,  
21 or would not have the power to tax.



1 THE CHAIRMAN: Any other delegate desire to  
2 speak in opposition? Are you ready for the question?

3 Sound the quorum bell.

4 DELEGATE CLAGETT: Mr. Chairman.

5 THE CHAIRMAN: Delegate Clagett.

6 DELEGATE CLAGETT: I second this amendment, and  
7 I feel that I should make one or two very brief obser-  
8 vations in support of it, if I am in order.

9 THE CHAIRMAN: You may proceed.

10 DELEGATE CLAGETT: What really is being at-  
11 tempted here, and it is of vital importance, is that not  
12 only is the stability of the tax and fiscal situation  
13 being maintained, but another element added, and that is  
14 the psychological initiative to be brought into being on  
15 the part of local governing bodies.

16 Think of it in these simple terms: A board  
17 of directors of a bank in a local area, where the bank  
18 is as solid as the Rock of Gibraltar, but the area around  
19 that bank is drying up because, as a young man comes in  
20 and attempts to get a loan from the bank, and it turns  
21 out he is only 21 years of age and has no other credit





1 assets in back of him than his good idea, the board of  
2 directors turn him down and consequently the area shrivels.  
3 The bank is stable and sound but the area has no initi-  
4 ative to go forward in any direction.

5 What is being attempted here is that the shared  
6 powers being granted to the counties to stimulate viability  
7 and initiative on the part of that local government will  
8 have some means of carrying out those powers. Without  
9 money to do something, the something cannot be done,  
10 and consequently the idea gets abandoned.

11 The Baltimore Sun, in an article, or in an edi-  
12 torial on November 8 pointed up this very same point,  
13 and said, this is clear, sound home rule could not be  
14 assured the counties or other local or regional govern-  
15 ments if they were put into a straitjacket in the matter  
16 of taxes.

17 This is taking the counties out of the strait-  
18 jacket and giving them an avenue of approach to the  
19 General Assembly where, in the area of new tax powers,  
20 that is where the General Assembly has not acted by way of  
21 a specific grant to the counties to go forward, where no



1 tax law has as yet been initiated. The county having  
2 conceived the idea, comes forward, after a resolution,  
3 which needs careful thinking out and planning, to the  
4 General Assembly, and the General Assembly will have to  
5 provide procedures by which these matters can be handled  
6 properly, and says to the General Assembly, before a  
7 regular session, we want to impose this tax. Now can we  
8 do it?

9 THE CHAIRMAN: Delegate Clagett, you have one-  
10 quarter minute.

11 DELEGATE CLAGETT: The General Assembly has the  
12 whole session within which to decide yea or nay, in order  
13 to preserve uniformity and stability of the fiscal  
14 picture. If it does not say no, then the county has the  
15 right to go ahead, to exercise its initiative to carry  
16 out the program.

17 I urge you to vote in favor of this amendment.

18 THE CHAIRMAN: Any further discussion?

19 Delegate Raley, do you desire to speak in  
20 opposition or in favor?

21 DELEGATE RALEY: Opposition.



1 THE CHAIRMAN: You may proceed.

2 DELEGATE RALEY: Mr. Chairman, I would like to  
3 speak in opposition to this amendment.

4 What it does, it sets up a procedure. It sets  
5 up a procedure in the Constitution that is not needed,  
6 and it has a very serious demerit it seems to me because  
7 it does set this kind of inflexible procedure in a consti-  
8 tution, where it should very well be left to the legis-  
9 lature to set up any type of procedure. It could be much  
10 easier handled, it seems to me, by transitory provisions,  
11 or whatever you call it, they write up on this.

12 In answer to Delegate Clagett about this initi-  
13 ative, and we all like initiative, I think this very  
14 well will have the opposite effect.

15 It will stifle initiative because many of these  
16 counties will not want to be put on the spot as such and  
17 have it by-passing a resolution prior to any tax being  
18 approved. They will not do anything, whereas they could  
19 go directly to the General Assembly.

20 I just think that this is not needed in the  
21 Constitution; forever and more an inflexible procedure



1 that might need changing in time to come. It is some-  
2 thing that is not needed. We should leave the flexibility  
3 to the legislature to handle this type thing.

4 THE CHAIRMAN: Does any other delegate desire  
5 to speak in favor?

6 Delegate Beatrice Miller.

7 DELEGATE B. MILLER: I would like to ask a  
8 question of Delegate Needle if I may.

9 THE CHAIRMAN: Will Delegate Needle yield to  
10 a question?

11 DELEGATE NEEDLE: Surely.

12 THE CHAIRMAN: Delegate Miller, you may proceed.

13 DELEGATE B. MILLER: In the last few words, the  
14 General Assembly has not rejected a resolution, do you  
15 mean there if the General Assembly fails to act or if it  
16 positively approves?

17 DELEGATE NEEDLE: It means if the General  
18 Assembly fails to act, then the counties will have that  
19 tax power.

20 THE CHAIRMAN: Any other discussion?

21 Are you ready for the question? The question





1 arises on the adoption of Amendment No. 6. A vote Aye  
2 is a vote in favor of the adoption of the amendment. A  
3 vote No is a vote against. Cast your vote.

4 Have all delegates voted? Does any delegate  
5 desire to change his vote?

6 The clerk will record the vote.

7 There being ten votes in the affirmative and  
8 108 in the negative, the motion is lost. The amendment  
9 fails.

10 The Chair recognizes Delegate Needle to offer  
11 a further amendment to Section 7.05.

12 DELEGATE NEEDLE: I would like to offer Amend-  
13 ment 8, which would become Amendment 7.

14 THE CHAIR: It will be Amendment No. 7. The  
15 clerk will read the amendment.

16 MR. QUILLEN: Amendment No. 7 to Committee  
17 Recommendation No. LG-1, by Delegate Needle:

18 On page 3, Section 7.05, titled Powers of  
19 Counties, line 14, strike out the words "and power to tax";  
20 and

21 On page 3, line 25, after the period add the



1 following:

2 "A county may also exercise any taxing power  
3 requested by a resolution submitted by the governing  
4 body of the county and approved by the General Assembly  
5 in accordance with procedures established by law."

6 THE CHAIRMAN: Is there a second?

7 (There was no response.)

8 THE CHAIRMAN: Is there a second to Amendment  
9 No. 7?

10 DELEGATE CLAGETT: Second.

11 THE CHAIRMAN: The amendment is seconded. The  
12 Chair recognizes Delegate Needle to speak to the amend-  
13 ment.

14 DELEGATE NEEDLE: Mr. Chairman, there is only  
15 one substantive change in this amendment from Amendment  
16 No. 6 and that is that it requires affirmative action by  
17 the General Assembly in order for the counties to impose  
18 the requested new tax power.

19 As you see, I do not quit very easily. I think  
20 this is a very crucial question. I think it goes to the  
21 heart of the shared powers doctrine, so heartily recommended



1 by your Committee on Local Government. However, with  
2 regard to the tax powers, as has already been pointed out  
3 by Delegate Moser, the Committee Recommendation on that  
4 particular issue was by a ten to seven, with two absten-  
5 tion, vote. We have a 19-member committee and the very  
6 barest majority of ten favored the absolute exclusion  
7 of the tax power from the shared powers of the counties.

8 I think that this second compromise amendment  
9 comes the closest to the Case-Raley Proposal 387. It  
10 still retains all of the virtues which I tried to speak  
11 to before, but requires affirmative action by the General  
12 Assembly in order for the county to impose the new tax.

13 In other words, the county cannot impose that  
14 tax if the General Assembly fails by inaction to act.

15 I therefore say that it has all of the virtues  
16 and retains the virtues which Delegates Case and Raley  
17 desired for the General Assembly to retain the plenary  
18 power of the General Assembly over local taxing powers.

19 THE CHAIRMAN: The Chair recognizes Delegate  
20 Moeser to speak in opposition to the amendment.

21 DELEGATE MOESER: Mr. Chairman, I think that



1 proposal tends to be more restrictive upon local initi-  
2 ative than what is actually provided in Section 7.05 of  
3 the Committee Recommendation.

4 I am not going to repeat all I said previously,  
5 but I respectfully suggest that this amendment should  
6 also be defeated.

7 THE CHAIRMAN: Anyone else desire to speak in  
8 favor of the amendment?

9 Delegate Clagett?

10 DELEGATE CLAGETT: Mr. Chairman, I think it will  
11 be of some interest to this committee to know that with  
12 respect to this particular amendment, the vote of the  
13 committee was in favor of it by eleven to seven, and it  
14 carried along that course until cross currents entered  
15 into the picture, and those cross currents were those that  
16 came in our direction from the State Finance Committee,  
17 and even there this amendment was very nearly the joint  
18 approach adopted by the two committees, except again for  
19 cross currents which are not necessary to be further  
20 explained here on this floor, but I point out to you  
21 that you have no minority report coming out of the





1 Local Government Committee.

2 You have a degree of unanimity insofar as ap-  
3 proach to the final product, which is here on the floor.

4 That does not come and is not accomplished  
5 easily. It is accomplished only by compromise, and this  
6 idea was one of the areas where compromise resulted in  
7 the cross currents succeeding successfully in washing  
8 down and away a very good and basic idea.

9 Now the basic idea here again is to permit initi-  
10 ative and action on the part of local governments to  
11 carry out their programs by a way of financing, as well  
12 as preserving the fiscal stability which is so important  
13 insofar as all of us are concerned.

14 The mere fact that this is a little more diffi-  
15 cult to comprehend and to understand and, if you will,  
16 appreciate than merely to say the tax power is excluded  
17 should not be the defeat or cause for defeat of this good  
18 idea.

19 It permits the psychological initiative to be  
20 in the picture, along with sound financial stability.

21 I urge that you carefully consider and cast



1 your vote in support of this good amendment.

2 THE CHAIRMAN: Any delegate desire to speak  
3 in opposition?

4 Delegate Weidemeyer?

5 DELEGATE WEIDEMEYER: Mr. President, I must  
6 oppose this amendment.

7 As the matter is now drafted in 7.05, the  
8 legislature, when it says, county may exercise tax powers  
9 as may be granted to it by law, clearly means that the  
10 legislature can give them taxing powers in certain areas,  
11 and there is nothing in here to prevent any county council  
12 or administrative body from petitioning the legislature  
13 or passing a resolution.

14 Now if there were anything in here prohibiting  
15 them from doing that, then I would say that this might have  
16 some merit, but there is nothing in the law here now to  
17 prevent them from passing a resolution, and all this says  
18 that they can do they already have the right to do, and  
19 therefore I think it is unnecessary verbiage and sh ould  
20 be defeated.

21 THE CHAIRMAN: The Chair recognizes Delegate



1       Mentzer to speak in favor of the amendment.

2               DELEGATE MENTZNER: If the delegates have had  
3 time yet to read SF-3 from Taxation and Finance, they will  
4 notice that nearly all the objections were to the blanket  
5 grant of taxing powers to the counties.

6               I would like to speak in favor of this amendment  
7 because I think it focuses county attention on county  
8 needs, and the ability within the county to meet their  
9 needs.

10              THE CHAIRMAN: Delegate Carson, do you desire  
11 to speak in opposition?

12              DELEGATE CARSON: Yes, Mr. Chairman.

13              Your Committee on Local Government considered  
14 this area for a considerable time, perhaps two weeks in  
15 all, although not every moment of that time to be sure.  
16 After full deliberation, the committee voted eleven to  
17 seven to vote against such a device, thinking that at  
18 best it was useless and sterile, and at worst, it was an  
19 impediment to both the local governments and to the  
20 state.

21              It is my understanding that the state, that



1 the Committee on State Tax and Finance mostly, perhaps  
2 missing one vote, was against this. I think we should  
3 be against it here. I think it is useless. I think it  
4 is sterile, at best, and at worst I think it is a hopeless  
5 Rube Goldberg device.

6 THE CHAIRMAN: Does any delegate desire to speak  
7 in favor?

8 Delegate Hanson?

9 DELEGATE HANSON: Mr. Chairman, I am not under  
10 the illusion that after the last vote that this proposal  
11 falls on receptive ears here.

12 I have, however, been defeated enough times to  
13 know that the majority is not always right.

14 I think there is considerable merit in this  
15 approach. For my own taste, I would have preferred to  
16 see Section 7.05 leave to the counties the full initiative  
17 in areas of taxation because I think with the shared  
18 powers doctrine, the state would have taken such action  
19 in this field as it felt necessary and prohibited county  
20 action where it would have been necessary to prohibit  
21 county action in such fields as nuisance taxes, et cetera.





1           The critical issues here are I think two: One  
2 is to provide a maximum degree of latitude for county  
3 government to develop, based on the economic circumstances  
4 in that county, the kind of fiscal package that makes  
5 sense there to finance the programs that the county will  
6 want to conduct under the new grant of power made avail-  
7 able by this Constitution.

8           The second requirement, which is sometimes in  
9 conflict with that, is to provide a procedure which  
10 assures that in developing its own tax package, that the  
11 county does not intrude upon the fiscal stability and  
12 the fiscal requirements of the state.

13          The proposal submitted by Delegate Needle does  
14 this. It permits the county to develop, using its own  
15 fiscal resources and experts, the kind of program that  
16 it needs. It permits it, in fact it encourages it to  
17 bring that kind of program before the General Assembly  
18 for review, but it does not permit that program to go  
19 into effect unless the General Assembly has approved it,  
20 thereby permitting the General Assembly to assure itself  
21 that there is going to be no raid on the Treasury, to



1 assure itself that no program of nuisance taxes is being  
2 adopted by the county.

3 I think it does provide a slightly better  
4 compromise between those of us who would prefer no re-  
5 strictions on the tax powers of the counties in the  
6 Constitution and those who would prefer that all tax power  
7 be taken away from the county.

8 THE CHAIRMAN: Delegate Hanson, the majority  
9 has decreed that you have one-quarter of a minute.

10 DELEGATE HANSON: Mr. Chairman, that is probably  
11 right.

12 THE CHAIRMAN: Delegate Sherbow.

13 DELEGATE SHERBOW: I shall be very brief. I  
14 rise in opposition to the amendment.

15 While these matters were being considered by  
16 the Committee on Local Government and other tax matters  
17 by the Committee on State Finance and Taxation, we thought  
18 it best to have committees working between the two groups  
19 in order to avoid the kind of debate on intricate,  
20 complicated matters that might follow if there were  
21 divisions between the committees.



1           We sent our representative to the Local  
2 Government Committee to discuss this matter on taxation.

3           We considered this proposal and other variants  
4 of the same proposal, and before the State Finance and  
5 Taxation Committee, with I think only one exception, it  
6 was unanimously rejected. It was very seriously discussed  
7 and considered.

8           I know nothing of cross currents. I only know  
9 of pouring oil on troubled waters, and this we have tried  
10 to do throughout all of the discussions.

11           It has been taken up, both committees felt it  
12 was improper; we hope this Committee of the Whole agrees  
13 with them and votes against this proposal or this amendment.

14           THE CHAIRMAN: Is there further discussion?

15           Are you ready for the question? The question  
16 arises on the adoption of Amendment No. 7. A vote Aye  
17 is a vote in favor of the adopting of the amendment; a  
18 vote No is a vote against. Cast your votes.

19           Have all delegates voted? Does any delegate  
20 desire to change his vote? The clerk will record the  
21 vote.



1           We seem to still be having trouble with the  
2 tally on the board. There being 17 votes in the affirma-  
3 tive and 103 in the negative, the amendment is lost. The  
4 amendment is rejected.

5           DELEGATE CLAGETT: Mr. Chairman.

6           THE CHAIRMAN: Delegate Clagett.

7           DELEGATE CLAGETT: I rise to a point of personal  
8 privilege.

9           May I say that the oil that was cast upon the  
10 troubled waters is still there.

11          THE CHAIRMAN: Delegate Kirkland, your amendment  
12 is now here. We will revert to a consideration of Sec-  
13 tion 7.10. This will be Amendment No. 5. The clerk  
14 will read the amendment.

15          MR. QUILLEN: Amendment No. 5 to Committee Recom-  
16 mendation No. LG-1 by Delegate Kirkland.

17          On page 4, strike out all of lines 31 through  
18 45, Section 7.10 Establishment of Multi-County Governmen-  
19 tal Units.

20          THE CHAIRMAN: Is the amendment seconded?

21          (Whereupon, the amendment was seconded.)





1 THE CHAIRMAN: The amendment is moved and  
2 seconded.

3 The Chair recognizes Delegate Kirkland to speak  
4 to the amendment.

5 SENATOR KIRKLAND: Mr. Chairman, on the basis  
6 that the General Assembly already has this power, and  
7 on the basis that we are providing for stronger county  
8 governments and on the basis of enumeration can become  
9 excluded and on the basis that this particular section is  
10 more restrictive on the General Assembly, I would like  
11 to see this section deleted.

12 THE CHAIRMAN: Delegate Moser.

13 DELEGATE MOSER: I rise, Mr. Chairman, and  
14 ladies and gentlemen, in rather brief opposition. I  
15 think that we have all had ample discussion of Section  
16 7.10. I think we all realize what it does, and in fact,  
17 I have already pointed out, I think, that this permissive  
18 referendum might very well not be available to people,  
19 unless it is provided for specifically, and therefore  
20 I respectfully suggest that this amendment be voted down.

21 THE CHAIRMAN: Any other delegate desire to speak



1 in favor? Does any delegate desire to speak against?

2 Are you ready for the question? The question  
3 arises on the adoption of Amendment No. 5. A vote Aye  
4 is a vote in favor of the adoption of the amendment,  
5 a vote No a vote against. Cast your vote.

6 Has every delegate voted? Does any delegate  
7 desire to change his vote?

8 The clerk will record the vote.

9 There being eleven votes in the affirmative and  
10 96 in the negative, the motion is lost. The amendment  
11 fails.

12 The Chair understands there are no further  
13 amendments to Section 7.05. Are there any further amend-  
14 ments to Section 7.06?

15 (There was no response.)

16 THE CHAIRMAN: The Chair hears none.

17 We will now proceed to a consideration of  
18 Sections 7.07, 7.08, 7.09. Under the debate schedule  
19 they are to be considered together. The Chair understands  
20 Delegate James has an amendment.

21 Please number the amendment Amendment No. 8.



1 The clerk will read the amendment.

2 MR. QUILLEN: Amendment No. 8 to Committee  
3 Recommendation No. LG-1, by Delegate James:

4 Strike out Sections 7.07, 7.08, and 7.09 and  
5 insert in lieu thereof the following:

6 Section 7.07 Municipal Corporations

7 The General Assembly shall provide by general  
8 law for the government of municipal corporations, includ-  
9 ing the incorporation, merger, dissolution, and alteration  
10 of boundaries thereof; and it shall permit each municipal  
11 corporation to frame and adopt a charter, with amendment  
12 procedures, for its own self-government within the limits  
13 and by procedures defined by the general law. Municipal  
14 corporations existing on the effective date of this  
15 Constitution shall retain their charter and other legal  
16 powers until changed pursuant to the provisions of this  
17 section.

18 THE CHAIRMAN: Is the amendment seconded?

19 (Whereupon, the amendment was seconded.)

20 THE CHAIRMAN: The amendment is seconded. The  
21 Chair recognizes Delegate James to speak to the amendment.



1 DELEGATE JAMES: Mr. Chairman, members of the  
2 committee, first I would like to say that I appreciate  
3 the work of the committee and the difficulties they had  
4 in ironing out the three sections involved for municipal  
5 corporations, and I am willing to support those sections  
6 as a second choice. However, I think that the sections  
7 are unnecessarily complicated.

8 Section 7.07 simply provides existing municipal  
9 corporations, or rather municipal corporations existing  
10 at the effective date of this article, shall not be dis-  
11 solved, merged or have their existing powers withdrawn  
12 nor their boundaries changed without the consent of the  
13 governing bodies of the county and municipal corporations  
14 affected or except as the General Assembly may provide  
15 by general public law.

16 This really boils down in the final analysis  
17 to simply saying that the General Assembly by general law  
18 is going to handle these matters, and there is just  
19 simply no other interpretation.

20 Similarly, you have in Section 7.07, although  
21 there is a lot of language there, such procedures and







1 standards as the General Assembly may provide by general  
2 public law, so here again the General Assembly under  
3 this section seems to be in complete control of the situ-  
4 ation; although this section does acknowledge that the  
5 county, a county may provide by law for the creation of  
6 new municipal corporations.

7 I see no necessity for vesting that power in  
8 the county.

9 Now why put civil units in here? Certainly  
10 under home rule, full home rule, the power is vested in  
11 the counties. They have complete authority to create  
12 new civil units. This is an unnecessary provision.

13 Finally, in Section 7.09, there is a provision  
14 that the General Assembly may provide for additional  
15 powers.

16 Now, the amendment I have offered just simply  
17 recognizes, and I might say it is modeled after the  
18 Alaska handling of this matter, simply says, and recog-  
19 nizes frankly that the General Assembly may provide by  
20 general law for the government of the municipal corpo-  
21 rations, including the incorporation, merger, dissolution



1 and alteration of boundaries thereof, and it shall permit  
2 each municipal corporation to frame and adopt a charter  
3 with amendment procedures, for its own self-government,  
4 within the limits and by procedures defined by general  
5 law. Municipal corporations existing on the effective  
6 date of this Constitution shall retain this charter and  
7 other legal powers until changed pursuant to the provi-  
8 sions of this section.

9 The purpose of my submitting this is to make  
10 it simple to recognize that from a constitutional stand-  
11 point that every municipality will have the right to  
12 charter, the right to offer amendments, and that the  
13 powers will be defined by general law. I think that is  
14 what the committee tried to do, but in a very compli-  
15 cated way, they said practically the same thing. I am  
16 just submitting my amendment for the purpose of simplicity.

17 THE CHAIRMAN: The Chair recognizes Delegate  
18 Moser to speak in opposition to the amendment.

19 DELEGATE MOSER: Mr. Chairman, ladies and  
20 gentlemen, I just got a look at this simple amendment  
21 that Delegate James proposed. I rise in opposition to



1 it, and in very strong opposition to it because I think  
2 that it does a lot of things that at least the Local  
3 Government Committee hopes the Convention will not want  
4 to adopt.

5 Let me state first that on first reinspection  
6 it looks like the delegate proposal that was introduced  
7 earlier was rejected by the committee at some early  
8 occasion.

9 What this does basically is exactly what the  
10 Maryland Municipal League originally was pressing for.  
11 That is to say, it sets up municipalities completely  
12 independent of the counties, and gives them independent  
13 power directly from the General Assembly. This is just  
14 exactly what the committee does not want.

15 I do not mean to imply that this amendment  
16 was sparked by the recent internal problems that you have  
17 read about in the press and have heard about on the  
18 floor of the Assembly here within the Maryland Municipal  
19 League, but I do suggest that this is precisely what  
20 they want.

21 Now there are two, and as I said, I have just



1 looked at this briefly, but there are two major problems  
2 with it as I see it.

3 In the first place, there is no veto allowed  
4 a county over new incorporations. I think what you could  
5 have here is, again, a proliferation of new municipalities.  
6 I think this is something not any of us want.

7 Secondly, there is absolutely no right in the  
8 counties to give additional powers to new municipalities  
9 or old municipalities, as we provide in Section 7.09.

10 I do not know whether it has fewer words in  
11 it. It may possibly, but not only is it not an improve-  
12 ment, but I think that it -- let me put it this way:  
13 I think that if this amendment is adopted, there probably  
14 will be some additional amendments coming in, and we  
15 are going to be tied up probably in the same process  
16 that the committee itself underwent for a period of  
17 four days or so, trying to arrive at a provision which  
18 was satisfactory to everybody.

19 I think that this is what 7.07, 7.08 and 7.09  
20 do, and I would respectfully request that this amendment  
21 be rejected.





1 DELEGATE JAMES: Mr. Chairman.

2 THE CHAIRMAN: Delegate James.

3 DELEGATE JAMES: I would like to call the atten-  
4 tion of the members, the present law vests in the coun-  
5 ties, they may veto over the creation of a municipal,  
6 and certainly this law will be continued by the language  
7 of the proposed amendment, so that the General Assembly  
8 would have the power to define the home rule.

9 First there would be a constitutional guarantee  
10 for charter. From that point it would be up to the  
11 General Assembly to provide home rule powers by general  
12 law, and it seems to me this is a simple way to handle  
13 it, simple from the constitutional standpoint and does  
14 not involve this complicated relationship which is at-  
15 tempted to be set up in these provisions.

16 THE CHAIRMAN: The Chair understands that there  
17 are three other amendments dealing with this same  
18 subject matter, one of them proposed to be offered by  
19 Delegates Macdonald and Fox as an amendment only to  
20 Section 7.07; the other amendments being to substitute  
21 a single section for all three sections.



1           One of those substitutes is offered, or intended  
2 to be offered by Delegates Macdonald and Fox and the  
3 other one by Delegate Macdonald alone.

4           The Chair would like to inquire of Delegate  
5 Macdonald whether one of these is intended as a substitute  
6 for the other or just what the situation is.

7           DELEGATE MACDONALD:     Mr. Chairman, we are  
8 not going to offer the first two which we have mentioned,  
9 just the last one, which is designated "L".

10          THE CHAIRMAN:   The ones designated "L" and "O"  
11 will not be offered?

12          DELEGATE MACDONALD:   The one designated "L"  
13 will be offered.   The other two will not be offered.

14          THE CHAIRMAN:   Thinking this was a multiplicity,  
15 the Chair was going to suggest that we take them each  
16 up one after the other, but in view of this, and in order  
17 to avoid the necessity of reconsidering, the Chair sug-  
18 gests that you now offer this amendment as a substitute  
19 for the pending Amendment No. 8, if that is agreeable to  
20 you.

21          DELEGATE MACDONALD:   I will offer the amendment



1 which has been designated as Amendment No. L as a sub-  
2 stitute for Amendment No. 8.

3 THE CHAIRMAN: The clerk will read the amendment.  
4 This will be Amendment -- I think it would be simpler for  
5 uniformity to call it Amendment No. 9.

6 MR. QUILLEN: Amendment No. 9 to Committee  
7 Recommendation No. LG-1, by Delegate Macdonald:

8 On pages 3 and 4 of Committee Recommendation  
9 No. LG-1, strike out all of Sections 7.07, 7.08 and 7.09,  
10 starting on page 3, lines 50 and extending through page 4,  
11 line 27 and insert in lieu thereof the following:

12 "Section 7.07. Municipal Corporations.

13 " A county by law may establish, merge and  
14 dissolve municipal corporations within the county, may  
15 alter their boundaries, and may grant and withdraw from  
16 them any and all powers of the county. No municipal  
17 corporation existing at the effective date of this  
18 article may be dissolved, have its boundaries diminished  
19 or have withdrawn any of its existing powers as set forth  
20 in its charter, without the consent of its governing  
21 body or the consent of the General Assembly by



1 public general law.

2 THE CHAIRMAN: Is the Amendment No. 9 seconded?

3 (Whereupon, the amendment was seconded.)

4 THE CHAIRMAN: The amendment having been seconded  
5 the Chair recognizes Delegate Macdonald to speak to  
6 Amendment No. 9.

7 DELEGATE MACDONALD: May I inquire, Mr. Chairman,  
8 how much time I have?

9 THE CHAIRMAN: You have ten minutes under the  
10 debate schedule, including the time spent in answering any  
11 questions put to you.  
12  
13  
14  
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1 DELEGATE MACDONALD: Mr. Chairman, Members  
2 of the Com mittee of the Whole:

3 It is a pleasure to be able to offer an amend-  
4 ment which addresses itself to a matter which is completely  
5 devoid of emotion and which we may look at with easy  
6 objectivity.

7 We have in the State of Maryland 152 municipal  
8 corporations. These municipal corporations vary in size,  
9 but all totaled, the population of all municipal corpora-  
10 tions outside of Baltimore City is approximately 15 per-  
11 cent of the population of the State.

12 Most of the area of the State is served by  
13 county government. The municipalities comprise only a  
14 minority of the area of the State.

15 In some areas, the municipal corporations  
16 duplicate the services of the counties. This is particu-  
17 larly true in the counties which have become urban in na-  
18 ture.

19 In some other areas the municipalities do per-  
20 form very valuable services, which are not available from  
21 the county government. Nevertheless, the county is the



1 basic unit of local government in the State of Maryland.

2 This is our tradition. It has been thus for  
3 a long period of time.

4 The counties perform services and functions  
5 which are not performed by the municipal corporations.  
6 They are the arm of the State insofar as appropriation  
7 for schools are concerned. They handle assessments for  
8 the State.

9 They handle welfare matters for the State, and  
10 in addition, they perform other services of local govern-  
11 ment.

12 I give you this background to put this matter  
13 in proper perspective.

14 This brings us to the matter of the committee's  
15 recommendation in sections 7.07, 7.08, and 7.09. In sec-  
16 tion 7.08 the committee recommends that new municipal  
17 corporations shall be under the county. However, the  
18 counties are not given any authority over existing municipal  
19 corporations. I suggest to you that the committee's recom-  
20 mendation thus creates a two-headed monster; existing  
21 municipal corporations would be handled in one way and



1 new municipal corporations in another.

2 Now, the sponsors of the committee recommenda-  
3 tion, the persons who are insistent that municipal  
4 corporations stay under the General Assembly, state  
5 that there is competition between the counties and the  
6 municipal corporations, and that it would be unfair to give  
7 one competitor an edge.

8 I submit that this is partly true, and partly  
9 not true. Insofar as the structure of municipal corpora-  
10 tions is concerned, the structure of their government,  
11 there is no competition between the counties and the muni-  
12 cipalities.

13 Insofar as the powers which may be exercised  
14 by municipal corporations are concerned, there is no  
15 competition between the counties and municipalities.

16 The evidence before our committee bore this out.  
17 There is one area in which there is competition between  
18 the counties and the municipalities, and that is the area of  
19 a territory. Since 1954, municipal corporations in this  
20 State have operated under Article XI(e) of the Constitution  
21 and Article XXIII(a) of the Maryland Code.





1 Under Article XXIII(a) of the Maryland Code  
2 they have the right to annex territory outside of their  
3 boundaries without any voice in the matter being given  
4 to the counties. They can do it without the concept of  
5 the county, without the county even knowing about it.

6 It happens, and it has happened often.

7 I submit to you that this troublesome area of  
8 annexation is a local problem; that it is a matter  
9 which should be determined locally.

10 At the present time it is determined by a  
11 formula, if you will, which is in Article XXIII(a).

12 I submit that the formula does not work in all instances.

13 In many cases, the annexation by a municipal corporation  
14 has been good, it has been beneficial, and it should take  
15 place. In other cases, it has been harmful, it has been  
16 detrimental.

17 The most outstanding examples have been in  
18 cases where it has been detrimental, that in some cases  
19 annexations have taken place without regard to master  
20 zoning plans or master highway plans of the county, with  
21 detrimental effect.





1 I might add that some developers in some in-  
2 stances have made gambles. If they can get the zoning  
3 through the county, then they ask the municipality to  
4 (a) annex them; and (b) grant them zoning; and this  
5 has been done.

6 I suggest that this troublesome problem can be  
7 best settled at the local area, in the local area, by the  
8 local governing bodies.

9 I think it would be a great step forward if  
10 we would set up machinery in this Constitution whereby  
11 the municipal corporations and the counties would be required  
12 to sit down and work over their problems, work their problems  
13 out over the same table, and I have faith and confidence  
14 that they would do so.

15 Let us assume that in a particular annexation  
16 situation that there is a deadline, and that the county  
17 and the municipality cannot agree. Should the county  
18 be given the right to veto?

19 I suggest to you that they should. The  
20 county is the basic unit of local government. We are here  
21 decreasing the powers of the counties in this matter of



1 home rule. We are mandating home rule.

2 More than that, this solution which I suggest  
3 is fair. If you will read my amendment, you will see  
4 that the boundaries of a municipal corporation cannot be  
5 diminished without its consent. All my amendment suggests  
6 is the same for the counties. The municipal corporations  
7 should not be allowed to enlarge their boundaries into  
8 the county area without the county's consent.

9 THE CHAIRMAN: Does any delegate desire to speak  
10 in opposition?

11 Delegate Moser.

12 DELEGATE MOSER: Briefly, Mr. Chairman and  
13 ladies and gentlemen, Mr. Macdonald was, as you no doubt  
14 conceived, the "1" in the 18 to 1 vote by which our com-  
15 mittee adopted 7.07, 7.08, and 7.09.

16 His amendment would treat the municipalities --  
17 well, it presents the opposite end of the spectrum from  
18 Delegate James' proposal, and that is the best way to de-  
19 scribe it.

20 One of the problems that I see in it, which is  
21 a technical problem, possibly, it limits the



1 preservation of existing powers in lines 17 and 18 --  
2 this is Delegate Macdonald's proposal -- to existing powers  
3 as set forth in the charter, referring to a municipal  
4 charter.

5 In some instances municipalities do not have the  
6 power to amend their charters, and this might create a  
7 problem. Of course, a county could permit them to do this.  
8 That is to say, could permit a municipality within its bound-  
9 daries to amend its charter.

10 This is why I suggested, when speaking in  
11 opposition to Delegate James' proposal, that we really  
12 stick with the committee draft.

13 I do hope that this Convention will vote down  
14 the substituted amendment, will then vote down the  
15 amendment itself, and will preserve provisions 7.07, 7.08  
16 and 7.09 as they are set forth in here.

17 THE CHAIRMAN: Does any other delegate desire  
18 to speak in favor of Amendment No. 9?

19 (There was no response.)

20 THE CHAIRMAN: Does any delegate desire to  
21 speak in opposition?





1 Delegate Gullett.

2 DELEGATE GULLETT: Mr. Chairman, the proposal  
3 of Delegate Macdonald is 180 degrees different from  
4 the committee's recommendations on two very major subjects  
5 which Mr. Moser has just mentioned, one of them about the  
6 charter powers. This motion says, as set forth in its  
7 charter, and this would have a very drastic effect upon  
8 municipalities who do not have particular powers set forth  
9 in their charters that they may wish to use in the  
10 future, and you could not enumerate these powers in the  
11 charter. You should not have to. We went to great  
12 extent on the floor here yesterday to make this  
13 eminently clear to the Convention, that not only were  
14 the existing powers of charter powers to be retained by the  
15 committee's proposal, but also those powers that were avail-  
16 able to municipalities at the time of the adoption of  
17 this Constitution.

18 In the second instance, it provides a uni-  
19 lateral veto on the part of the county on annexation.  
20 In our viewpoint this is no more fair than the unilateral  
21 ability to annex on the part of the municipality.





1           We don't believe a municipality should go out  
2 willy-nilly and annex without regard to the people and  
3 without regard to the territory; nor do we believe the  
4 county should have unilateral veto over this. There  
5 should be a sitting down together of this, and this  
6 is what the committee's draft provides.

7           I think it is a very fair compromise on this  
8 score, and this I would urge, that this amendment be  
9 defeated.

10           THE CHAIRMAN: Does any other delegate desire  
11 to speak in favor of the amendment?

12           Delegate Clagett.

13           DELEGATE CLAGETT: Mr. Chairman, I do not rise  
14 in favor of the amendment, but in opposition to the  
15 amendment.

16           THE CHAIRMAN: You don't have the floor, then.

17           Does any delegate desire to speak in favor?

18           If not, you have the floor -- Delegate Macdonald;  
19 I am sorry.

20           DELEGATE MACDONALD: Mr. Chairman, in regard  
21 to the statement of the Chairman of the Committee, on the



1 final go-round it was 18 to 1, or 17 to 1, with Macdonald  
2 in the negative. I might also point out for the benefit  
3 of the Committee of the Whole that on this troublesome  
4 problem of municipal corporations, the committee took 43  
5 votes at various times during the deliberations. I have  
6 the action journal here. At one time, this was vote number  
7 46, the committee voted 16 to 0 that existing and new muni-  
8 cipalities should derive their structure and powers from  
9 the same source.

10 The committee's recommendation, which is before  
11 you here today, is not in accordance with that action  
12 number 46, which was taken 16 to 0. The committee went  
13 back and forth on this matter many times, and it was quite  
14 a struggle; and I submit to you the amendment which I  
15 have offered is very close to the proposal in the Eney  
16 Commission draft. As a matter of fact, it differs only  
17 in that it protects municipal corporations a little more.  
18 It gives them more protection. It preserves the status  
19 quo more than the draft set forth in the Commission's  
20 proposal.

21 I would urge that you vote in favor of this







1 that the municipalities have traditionally served a very  
2 valuable function in providing services to people within  
3 their areas from early colonial days, and are now render-  
4 ing valuable services.

5 But it is obvious that the municipalities are  
6 now in competition with the growing meeting of responsibility  
7 by the counties in providing of municipal services, and  
8 that competition, as the committee analyzed the testimony  
9 of the representatives of the county commissioners and the  
10 mayors of the municipalities during better than six weeks  
11 of its earlier deliberations, could not but appreciate  
12 that the counties were going to continue to provide  
13 more and more similar, formerly identified as municipal  
14 type services; and particularly it was anticipated that  
15 they would do so with the granting of the broad grant of  
16 powers under the so-called shared powers approach.

17 I want to say that there are 16 delegates here  
18 to this Convention from Prince Georges County. There are  
19 38 municipalities in Prince Georges County.

20 THE CHAIRMAN: Delegate Clagett, you have one-  
21 half minute.





1 DELEGATE CLAGETT: We, more than any other  
2 county, have felt the impact or the pressure of the Mary-  
3 land Municipal League, and notwithstanding that pressure,  
4 we have sought diligently and carefully to find a  
5 middle of the road approach, without giving outright autonomy  
6 to the municipality, but to preserve those municipalities  
7 in a working relationship with the county.

8 We have found this in 7.07, 7.08 and 7.09.  
9 I am opposed to Delegate Macdonald's amendment.  
10 I am more opposed to Delegate James' amendment. I ask that  
11 you vote them both down and support the committee's approach.

12 Thank you.

13 THE CHAIRMAN: Is there any further discussion?  
14 Are you ready for the question?

15 The question arises on the adoption of Amendment  
16 No. 9 as a substitute for Amendment No. 8. A vote Aye is  
17 a vote in favor of the amendment; a vote No, a vote against.  
18 If the amendment is adopted, it will be substituted for  
19 Amendment No. 8, and submitted to you for adoption.  
20 If it fails, Amendment No. 8 will be before you.

21 Cast your vote.



1 Have all the delegates voted? Does any  
2 delegate desire to change his vote? The Clerk will record  
3 the vote.

4 There being 16 votes in the affirmative and 105  
5 in the negative, the motion fails. The amendment is re-  
6 jected.

7 The question now arises on the adoption of  
8 Amendment No. 8. Is there any further discussion?

9 Delegate Boileau.

10 DELEGATE BOILEAU: Mr. Chairman, I would like  
11 to speak in opposition to Amendment No. 8.

12 The committee did a great deal of work in bring-  
13 ing about what I consider an excellent compromise, and I  
14 can only say that this work should be reflected in your  
15 vote against this amendment and in favor of the committee  
16 sections that deal with municipal corporations.

17 Thank you.

18 THE CHAIRMAN: Any further discussion?  
19 Are you ready for the question?

20 Delegate Gullett.

21 DELEGATE GULLETT: Mr. Chairman, I also, as



1 Delegate Clagett has said, he reluctantly spoke in opposi-  
2 tion to Delegate Macdonald's motion, and also reluctantly  
3 I speak in opposition to Senator James' amendment, for  
4 the reasons Mr. Boileau has set forth, but I see here  
5 he has made an excellent attempt to actually perform the  
6 same thing in less words and to style it up better.  
7 And perhaps some of this will be done in styling in the  
8 future, if there are problems here. But we feel that this  
9 compromise we have drawn between the counties and the muni-  
10 cipalities is a legitimate one, and we hope that it will  
11 carry.

12 Thank you.

13 THE CHAIRMAN: Delegate Carson.

14 DELEGATE CARSON: Mr. Chairman, I oppose, also,  
15 regretfully in that Senator James has proposed this  
16 amendment, and I have the highest respect for him. I think  
17 the amendment has considerable merit, but I think we ought  
18 to vote in favor of the committee's recommendation. And  
19 I may add that perhaps of those who voted in the committee  
20 for the powers of municipalities, I was as strong as any,  
21 and I think this compromise strikes the right balance.



1 I intend to vote in favor of the committee recommendation,  
2 and reluctantly against my good friend, Senator James'  
3 amendment.

4 THE CHAIRMAN: Further discussion?

5 Are you ready for the question?

6 The question arises on the adoption of Amendment  
7 No. 8. A vote Aye is a vote in favor of the amendment;  
8 a vote No, a vote against. Cast your votes.

9 Has efery delegate voted? Does any delegate  
10 desire to change his vote?

11 The Clerk will record the vote.

12 There being 15 votesin the affirmative and 105  
13 in the negative, the motion is lost. The amendment  
14 fails.

15 Although the hour for luncheon recess has  
16 arrived, the Clerk has advised me he is not aware of any  
17 other amendments. If there are no other amendments and we  
18 can conclude consideration of this article in a few minutes,  
19 I would like to do so. Therefore, I will ask whether  
20 there are any other amendments to sections 7.07, 7.08, or  
21 7.09.







1 (There was no response.)

2 THE CHAIRMAN: Any amendments to section 7.11?

3 DELEGATE CASE: I have an amendment.

4 THE CHAIRMAN: Delegate Case.

5 DELEGATE CASE: Mr. Chairman, I have an  
6 amendment to offer.

7 THE CHAIRMAN: This will be amendment 10.  
8 The Clerk will read the amendment.

9 MR. QUILLEN: Amendment No. 10 to Committee  
10 Recommendation No. LG-1, by Delegate Case:

11 On page 5, Section 7.11, Financing of Inter-  
12 governmental Authorities, line 8, after the word "taxes"  
13 add the following:

14 "unless the intergovernmental authority is  
15 governed by the elected representatives of the people."

16 THE CHAIRMAN: Is the amendment seconded?

17 (The amendment was duly seconded.)

18 THE CHAIRMAN: The amendment having been  
19 seconded, the Chair recognizes Delegate Case to speak to  
20 the amendment.

21 DELEGATE CASE: Mr. Chairman, Ladies and



1       Gentlemen of the Committee:

2               This is an amendment which I think will come  
3 with some surprise to Delegate Clagett, because it expands  
4 the power of tax and the power of taxation in certain  
5 defined and limited circumstances.

6               You will recall yesterday that I suggested an  
7 example to the Chairman of the Committee in which a county  
8 had created a civil unit to operate within its boundaries,  
9 but not to include any other governmental unit.

10              I further assume that this civil unit would be  
11 governed by a popularly elected representative government.  
12 We have established upon those assumptions that under  
13 section 7.08, the county would have the power to delegate  
14 to that civil unit the power to tax.

15              However, when we went to section 7.11, we  
16 found that quite a different situation obtained where the  
17 county had created an intergovernmental authority, and the  
18 only difference between an intergovernmental authority and  
19 a civil unit would be in the situation we posed, that  
20 the intergovernmental authority would contain two govern-  
21 ments, namely, part of the county and the municipality.



1           In that situation, even though the inter-  
2 governmental authority might be governed by elected repre-  
3 sentatives of the people, that authority would not have the  
4 power to tax.

5           This is an anomalous situation, because  
6 in the one case, where the power to tax is probably not  
7 needed, it is granted; and in the other, where it is, it  
8 is withheld.

9           My amendment would seek to make both of these  
10 units of government conform with respect to their powers.

11           If a civil unit, or if an intergovernmental  
12 authority is ruled or governed by the elected representa-  
13 tives of the people, then it seems to me that each should  
14 have, or the power should be in the Constitution to delegate  
15 power to tax to each. As it now stands, this is not true.  
16 The civil unit can receive the power, the intergovernmental  
17 authority cannot.

18           I would suggest that they should both be  
19 treated the same, and therefore, Mr. Chairman, I offer  
20 the amendment.

21           THE CHAIRMAN: The Chair recognizes Delegate



1 Moser.

2 DELEGATE MOSER: Mr. Chairman, I would like to  
3 direct one question to Delegate Case, and then I think  
4 probably on behalf of the committee, subject to any objec-  
5 tion, we could agree that the committee would not oppose  
6 this amendment.

7 THE CHAIRMAN: Will Delegate Case yield for  
8 a question?

9 DELEGATE CASE: Yes, sir.

10 THE CHAIRMAN: Delegate Moser, you may pro-  
11 ceed.

12 DELEGATE MOSER: When you use the phrase,  
13 elected representatives of the people, Delegate Case, are  
14 you referring to an intergovernmental authority with a  
15 board elected for that purpose, or would it also include  
16 a board made up of people who are elected to other offices  
17 and say serve on the board ex-officio?

18 DELEGATE CASE: I refer to a board elected for  
19 that purpose.

20 THE CHAIRMAN: Delegate Moser.

21 DELEGATE CASE: May I?







1 THE CHAIRMAN: Delegate Case.

2 DELEGATE CASE: May I amplify that?

3 The Committee will see a little later on that  
4 the Committee on State Finance and Taxation will bring  
5 in a recommendation that the power to tax can never be  
6 exercised unless and through the elected representatives of  
7 the people, and the language here would correspond to  
8 the provision there.

9 THE CHAIRMAN: Delegate Moser.

10 DELEGATE MOSER: Mr. Chairman, the committee  
11 would not oppose this amendment -- unless I see some  
12 opposition; and I don't.

13 THE CHAIRMAN: Delegate Clagett.

14 DELEGATE CLAGGETT: Very definitely I oppose  
15 it, Your Honor.

16 THE CHAIRMAN: Just a second. Delegate Moser  
17 has the floor.

18 DELEGATE MOSER: Mr. Chairman, I will yield  
19 to debate that on that ground, if there is some clarification  
20 that Delegate Clagett wants to make of it.

21 THE CHAIRMAN: Delegate Clagett, the Chair



1 recognizes you to speak in opposition.

2 DELEGATE CLAGETT: The word popularly is not  
3 in the amendment suggested by Delegate Case, and conse-  
4 quently it could be that the board that is imposing the  
5 tax under his amendment would be a school board, consisting  
6 of members of the county commissioners or members of some  
7 other body, whatever it may be, who were elected; and then --

8 THE CHAIRMAN: Delegate Case has already stated  
9 his intention, at least, that the term "elected representa-  
10 tives of the people" be directly elected by the people,  
11 and not ex officio representatives.

12 Did you understand the amendment?

13 DELEGATE CLAGETT: Yes, sir; but I have great  
14 respect for Delegate Case, and I like to see the wording  
15 in so that I can see them in front of me.

16 THE CHAIRMAN: Delegate Case, the suggestion  
17 is that the word "popularly" be inserted in front of  
18 "elected" in line 6.

19 DELEGATE CASE: Mr. Chairman, I see no reason  
20 for it. Section 8.01, which will come before the  
21 committee at a later date, will say this:



1 Taxes shall be imposed only for public purpose and by  
2 elected representatives of the people.

3 This has a perfectly well defined connotation,  
4 and I think the record is abundantly clear what we mean  
5 here.

6 THE CHAIRMAN: Delegate Clagett, would you be  
7 willing to accept that assurance with the understanding  
8 that the word mean that, so that the Committee on Style  
9 can consider it in co-nection with the section referred to  
10 by Delegate Case?

11 DELEGATE CLAGETT: Mr. Chairman, I accept  
12 that assurance, but I would like to have even more assurance  
13 and see the word "popularly" there. We had this debate be-  
14 fore us, you will recall.

15 THE CHAIRMAN: Do you move an amendment?

16 DELEGATE CLAGETT: I move the amendment, that  
17 the word "popularly" be inserted on line 6 of the amendment  
18 before the word "elected." Then there could be no question  
19 about it.

20 THE CHAIRMAN: Is there a second?

21 (Whereupon, the motion was duly seconded.)



1 THE CHAIRMAN: It has been moved and seconded  
2 that the amendment be modified by inserting in line 6  
3 between the words "the" and "elected", the word, "popularly."

4 The Chair recognizes Delegate Case.

5 DELEGATE CASE: Mr. Chairman, I don't want  
6 to take the time of the committee to nitpick over words.  
7 It is perfectly clear to me that it means popularly elected.  
8 I see no reason to put it in, and I am going to vote against  
9 it.

10 THE CHAIRMAN: Delegate Clagett.

11 DELEGATE CLAGETT: Mr. Chairman, then I am  
12 going to oppose the amendmend on this basis.

13 THE CHAIRMAN: The question that you are now  
14 debating is your motion to amend the amendment, Amendment  
15 No. 10, by inserting the word "popularly." I assume you  
16 are in favor of that?

17 DELEGATE CLAGETT: I am in favor of that.

18 THE CHAIRMAN: The Chair will put the question.  
19 Do you wish to speak to it?

20 DELEGATE CLAGETT: I would only wish to speak  
21 to the entire amendment.







1 THE CHAIRMAN: Any further discussion of the  
2 amendment to the amendment, to modify the amendment by  
3 inserting in line 6 the word "popularly" before the word  
4 elected?

5 Delegate Moser.

6 DELEGATE MOSER: I have a question, Mr. Chairman,  
7 of Delegate Case, for clarification.

8 THE CHAIRMAN: Delegate Case, will you respond  
9 to a question?

10 DELEGATE CASE: Yes, sir.

11 THE CHAIRMAN: Delegate Moser.

12 DELEGATE MOSER: Delegate Case, it is my under-  
13 standing that whether Delegate Clagett's amendment is  
14 successful or unsuccessful, the meaning will be precisely  
15 the same; is that correct?

16 DELEGATE CASE: That is my understanding. I  
17 hope it is yours and the committee's, too.

18 THE CHAIRMAN: Delegate Koss.

19 DELEGATE KOSS: Mr. Chairman, I have a ques-  
20 tion. I am quite confused. If you will turn to SF-3,  
21 which I know is not under consideration but which Delegate



1 Case alluded to. It says, taxes shall be imposed only for  
2 public purposes, and by the elected representatives of the  
3 people exercising legislative powers.

4 Now, is there any room for limitation in that  
5 language in terms of Delegate Case's proposed additional  
6 language to this section?

7 THE CHAIRMAN: Delegate Case.

8 DELEGATE CASE: Delegate Koss, if the recommen-  
9 dation which you have just read is passed, it will, of  
10 course, modify and cut across this provision, it will apply  
11 to all legislative groups attempting to exercise the  
12 power of tax, so that it would have to be exercised in the  
13 legislative power, and hence would have to be popularly  
14 elected.

15 THE CHAIRMAN: Delegate Freedlander.

16 DELEGATE FREEDLANDER: Mr. Chairman, may I  
17 pose a question to Delegate Case, please?

18 THE CHAIRMAN: Yes. The question under dis-  
19 cussion now is the motion to modify the amendment by the  
20 addition of the word popularly. Is your question directed  
21 to that?



1 DELEGATE FREEDLANDER: Yes, sir.

2 THE CHAIRMAN: Delegate Case, do you yield  
3 for a question?

4 DELEGATE CASE: Yes, sir.

5 THE CHAIRMAN: Delegate Freedlander.

6 DELEGATE FREEDLANDER: Is it possible that the  
7 popularly elected representatives of the people could be  
8 popularly elected to county commissioners or city councils  
9 and yet not be properly elected to the intergovernmental  
10 authority, and be represented upon the board of the inter-  
11 governmental authority but be the elected representatives of  
12 another governmental unit?

13 THE CHAIRMAN: Delegate Case.

14 DELEGATE CASE: The amendment says "unless  
15 the intergovernmental authority is governed by elected  
16 representatives of the people."

17 Now, it would seem to me they would have to be  
18 elected as governors of that board. That is what the  
19 language says to me.

20 THE CHAIRMAN: Delegate Case, may the Chair  
21 inquire, I direct your attention to the use of the word





1 "popularly" in line 6 in the immediately preceding phrase,  
2 and inquire whether you would be concerned about the omis-  
3 sion of that word in the following phrase covered by your  
4 amendment?

5 DELEGATE CASE: Mr. Chairman, I am not concerned  
6 about it, because my attempt was to dovetail the power to  
7 tax here with the language that is being used by the  
8 Committee on Finance and Taxation in its section.

9 THE CHAIRMAN: Any further discussion?  
10 The question arises --

11 DELEGATE CLAGETT: Mr. Chairman --

12 THE CHAIRMAN: Delegate Pullen.

13 DELEGATE PULLEN: May I ask Mr. Case a  
14 question?

15 THE CHAIRMAN: Delegate Case, do you yield to  
16 a question?

17 DELEGATE CASE: Yes, sir.

18 DELEGATE PULLEN: This in effect is establishing,  
19 of course, another agency, and in what way, if any, would  
20 the public school system be affected by this agency?

21 DELEGATE CASE: Does that go to the use of the





1 word "popularly" in the context?

2 THE CHAIRMAN: I am not at all sure.

3 DELEGATE CASE: I am not, either.

4 DELEGATE PULLEN: I think it is a legitimate  
5 question. I want to know what power this legislation would  
6 give this group, specifically the power to change or to  
7 alter in any way the operation of the public school system  
8 of the State.

9 THE CHAIRMAN: I am not sure that I understand  
10 your question at all. Do you understand the question,  
11 Delegate Case?

12 DELEGATE CASE: No, sir.

13 THE CHAIRMAN: Delegate Pullen, would you re-  
14 state your question, please?

15 DELEGATE PULLEN: I just want to know if in  
16 any way this new agency, regional government, will affect  
17 the public school system.

18 THE CHAIRMAN: The Chair rules the question  
19 is not germane to either the amendment to modify the  
20 amendment or to amendment 10. You may ask the question  
21 when we come back to a consideration of section 7.11.



1 DELEGATE CLAGETT: Mr. Chairman, I want to be  
2 sure that my intent is clearly in the language that we are  
3 adding to this amendment, and I would like that amendment  
4 to read, as amended, "unless the intergovernmental  
5 authority is governed by the popularly elected representa-  
6 tives of the people to that intergovernmental authority,"  
7 and that would mean that --

8 THE CHAIRMAN: Just a second.  
9 Is the suggested further amendment seconded?  
10 (Whereupon, the motion was seconded.)

11 THE CHAIRMAN: Would you state it again.

12 DELEGATE CLAGETT: It would read as follows:  
13 "unless the intergovernmental authority is governed by the  
14 popularly elected representatives of the people to that  
15 intergovernmental authority."

16 THE CHAIRMAN: The amendment to the amendment  
17 as restated is to insert the word "popularly," in line  
18 6, before the word "the" and followed by the word "elected";  
19 and to insert in line 7, after the word "people" and be-  
20 fore the period, the words, "to that intergovernmental  
21 authority."



1 Is there any further discussion?

2 Delegate Hardwicke.

3 DELEGATE HARDWICKE: I would just like to point  
4 out, Mr. Chairman, that every place in this particular  
5 recommendation that the word "elected" is used the word  
6 or the adverb "popularly" precedes it, and it occurs to me  
7 that there is a great deal of merit in Delegate Clagett's  
8 proposal.

9 THE CHAIRMAN: Is there any further discussion?  
10 Are you ready for the question?

11 The question arises on the adoption of the  
12 amendment to the amendment, number 10, to insert in line  
13 six, after the word "the" and before the word "elected"  
14 the word "popularly," and to insert after the word "people  
15 and before the period in line 7 "to that intergovernmental  
16 authority."

17 A vote Aye is a vote in favor of the amendment  
18 to the amendment. A vote No is a vote against.

19 Cast your votes. Has every delegate voted?  
20 Does any delegate desire to change his vote? The Clerk  
21 will record the vote.



1           There being 101 votes in the affirmative  
2           and 5 in the negative, the amendment to the amendment  
3           is adopted.

4           The question now rises on the adoption of  
5           Amendment No. 10 as amended. Is there any further discus-  
6           sion?

7           Delegate Hanson.

8           DELEGATE HANSON: Mr. Chairman, unless I can  
9           obtain greater clarification of this amendment than I have  
10          at present, I will have to oppose it, because what this  
11          seems to do is to open up on an intergovernmental basis  
12          a fiscal affliction that occurs in other States which  
13          Maryland has been greatly blessed through its lack of ex-  
14          perience with:

15          .This is the power of special purpose authorities  
16          or special purpose districts to impose taxes. As a general  
17          principle of government and government finance I think it  
18          is most desirable to permit only general purpose units of  
19          government to impose taxes. In many States, school boards,  
20          for example, have the power to tax independent of the county  
21





1 government. I have always considered it one of the best  
2 features of Maryland government that this does not exist,  
3 that the general purpose is bale to balance the need of  
4 the community and to develop a unified tax program.  
5 This would also apply at the State level.

6 It seems to me that unless this can be inter-  
7 preted contrary to this position I have just taken, that  
8 we should oppose the amendment.

9 THE CHAIRMAN: Delegate Case.

10 DELEGATE CASE: I might suggest to Delegate  
11 Hanson that he has already voted for the thing he opposed  
12 when he voted for section 7.08. He voted for the  
13 creation of civil units, and those civil units were given  
14 by that section expressly this power.

15 It is a little strange to me to think that  
16 he would vote to permit a civil unit, which could be a  
17 sewer authority in a county, not including an incorporated  
18 city, that he would vote in favor of giving that kind of  
19 unit the power to tax, if delegated, and yet deny the power  
20 to the same unit if the incorporated city was included in  
21 it. His position is completely inconsistent with what he



1 has already done.

2 THE CHAIRMAN: The Chair recognizes Delegate  
3 Clagett to speak in opposition to the amendment.

4 DELEGATE CLAGETT: Mr. Chairman, it is true  
5 that a civil unit could include the type of animal that  
6 Mr. Case brought into being by his question yesterday  
7 and the repetition of the question this morning. However,  
8 it is not contemplated that that kind of a unit would be  
9 the one within the definition of civil unit. A civil  
10 unit is a unit of less than county stature, created only  
11 by the county for those areas where there has been no  
12 incorporation in the form of a municipal incorporation.

13 It would be those unincorporated areas where  
14 people are living who go under the lable of a town or a  
15 city but have not gone through the formality of incorpora-  
16 tion, and to provide for them as the county may see fit to  
17 provide for them a forum where they can meet and discuss  
18 governmental problems and responsibilities, and be able  
19 by conserted action to do something with respect to them.

20 That kind of a concept of civil unit is quite  
21 different from that which Delegate Case has brought into



1 focus here, although what he says is possible and cannot  
2 be ignored. It is the unfortunate difficulty of accurate  
3 definition, to be able to include and exclude at one and  
4 the same time where the two are not susceptible of that.

5 I say, however, in opposition to this amendment,  
6 that we are now going into an area of intergovernmental  
7 authorities, such as the Washington Suburban Sanitary  
8 Commission, or the school boards, or such other types of  
9 intergovernmental authorities as the future may dictate,  
10 and as the need develops, the required action should be  
11 taken.

12 There is no reason to give to such an authority  
13 or governmental type of unit this power to impose taxes.  
14 We have already said, and I am delighted to find Delegate  
15 Case in the position that I was in when I was coming forward  
16 with the earlier amendment suggested by Delegate Needles, of  
17 being inconsistent with respect to the providing of uniformity  
18 across the board, to preserve the stability of the fiscal  
19 and tax structure.

20 Why, then, would we want to give to such an  
21 authority the power to disrupt that uniformity by imposing



1 taxes, nuisance taxes -- we don't know what kind of taxes  
2 they are going to impose.

3 THE CHAIRMAN: You have one-quarter of a  
4 minute, Delegate Clagett.

5 DELEGATE CLAGETT: If there is any real merit  
6 to the idea of excluding the tax power from the broad grant  
7 of power to the co-nties, then there is all the more merit  
8 to keep that power of tax uniformly determined, area by  
9 area, unit by unit, in the General Assembly, and not in  
10 any other subordinate unit.

11 THE CHAIRMAN: Any other delegate desire to speak  
12 in favor of the amendment?

13 Delegate Moser.

14 DELEGATE MOSER: I speak, Mr. Chairman, in  
15 favor of the amendment, but obviously not as a committee  
16 chairman, because we have not considered this specifically.

17 I wanted also to clarify one thing. I had  
18 thought I had answered in response to one of Delegate Case's  
19 questions yesterday that a civil unit would be permitted  
20 the power to tax only if it consisted of properly elected  
21 representatives for that purpose. That is the only instance







1 when it would be permitted under this provision that we  
2 have.

3 I wanted to clarify that.

4 But, there is an additional limitation on the  
5 power to tax in the Constitution, and I think to be  
6 consistent, Delegate Case's amendment as an amendment has  
7 to be adopted, because an intergovernmental authority might  
8 have properly elected representatives elected for that  
9 purpose. The important thing to remember is you are  
10 not granting them by this the unlimited power to tax.

11 This would depend upon the law that created them.

12 Now, if the law says they are not going to have  
13 the power to tax, then they don't have the power to tax.  
14 It is simply, as I said earlier, a clarifying amendment.  
15 I don't think it changes anything substantially, and I  
16 don't quite see the problems that were mentioned by Delegate  
17 Claggett in this proposal.

18 THE CHAIRMAN: Does any further delegate de-  
19 sire to speak in opposition?

20 Delegate Marion.

21 DELEGATE MARION: Mr. Chairman, perhaps I don't



1 see everything that this amendment proposes to do, but it  
2 appears to me that what this would do is to blur the  
3 only basic distinction, except in name, that I have  
4 seen so far between an intergovernmental authority and a  
5 regional government; and it would seem to me that if both  
6 had the power to tax, if both were governed by popularly  
7 elected representatives of that particular unit of govern-  
8 ment, then the only difference that we will have created  
9 between them is that such an intergovernmental authority  
10 with power to tax is not subject to the referendum pro-  
11 visions, even the permissive referendum provisions  
12 which we have already written into section 7.10.

13 I see no purpose in this. Why have two things  
14 which are called by different names, but which could have  
15 the same functions? The General Assembly then could create  
16 an intergovernmental authority and would not have the  
17 Constitutional authority to submit that to the referendum of  
18 the affected area, but they would have the power to tax  
19 and be governed by popularly elected representatives.

20 THE CHAIRMAN: The Chair recognizes Delegate  
21



1 Hardwicke to speak in favor of the amendment.

2 DELEGATE HARDWICKE: I have a question, Mr.  
3 Chairman.

4 THE CHAIRMAN: Does any other Delegate desire  
5 to speak in favor?

6 To whom is your question directed, Delegate Hard-  
7 wicke?

8 DELEGATE HARDWICKE: To Delegate Moser, Mr.  
9 Chairman.

10 THE CHAIRMAN: Delegate Moser, will you respond  
11 to a question?

12 DELEGATE MOSER: Yes, sir.

13 THE CHAIRMAN: Delegate Hardwicke.

14 DELEGATE HARDWICKE: I realize this question  
15 may plow some of the same ground we plowed yesterday,  
16 but I think that this committ-e ought to give maybe more  
17 consideration to these terms than we have given, and with  
18 regard to that, I would like to ask Delegate Moser to explain  
19 further the concept of multi-county government, vis-a-vis  
20 popularly elected representative local government, vis-a-vis  
21 intergovernmental authorities.



1           The amendment which we adopted this morning  
2 makes it clear that there is something called multi-county  
3 governmental units, which is apparently the broadest kind  
4 of category, but, Delegate Moser, within that category is  
5 something called intergovernmental authorities.

6           Now, we are going to grant to this one part of  
7 the whole category, according to the amendment before us,  
8 the power to tax, if that authority is popularly elected.

9           Now, how does that differ from the others? Why  
10 shouldn't you say that a multi-county governmental unit,  
11 if popularly elected, should not have the power to impose  
12 the tax?

13           In other words, my question is, why are we picking  
14 one of the subdivisions within the concept of multi-county  
15 governmental units and not the other?

16           THE CHAIRMAN: Delegate Moser.

17           DELEGATE MOSER: I will try to answer that.  
18 I think that the only multi-county governmental units which  
19 I could think of which are not either authorities that  
20 would be regional governments, are such names as I mentioned  
21 in response to your question earlier today, Delegate







1 Hardwicke, something like a planning Commission, like  
2 the Regional Planning Council of the City of Baltimore.

3 That would be excepted, and I wouldn't think  
4 that it should have the power to tax, particularly if it  
5 had representatives of the people elected for that purpose.

6 I think Delegate Case's amendment does clarify,  
7 because it is conceivable that you would have a single  
8 purpose unit that people would refer to as an authority  
9 that might have popularly elected representatives, and  
10 therefore should have the power to tax and should not be  
11 included.

12 There are many other things within this defini-  
13 tion of multi-county governmental units which we just  
14 have had no contact with now, but which sometime in the  
15 future can be created, and I think there is a legitimate  
16 reason for making this distinction, which would be made  
17 if this clarifying amendment is adopted.

18 THE CHAIRMAN: The Chair recognizes Delegate  
19 Chabot to speak in opposition to the amendment.

20 DELEGATE CHABOT: No, sir. I also had a ques-  
21 tion to Delegate Case, if he would yield, if I am in order.



1 THE CHAIRMAN: Delegate Case, do you yield  
2 to a question?

3 DELEGATE CASE: Yes, sir.

4 THE CHAIRMAN: Delegate Chabot.

5 DELEGATE CHABOT: I believe it is, but I  
6 wanted to inquire, is it your intention that the language  
7 that would be added by your amendment, the "unless" clause,  
8 would constitute an exception only to the last clause that  
9 appears in the Committee Report, and not to the entire  
10 sentence that ends with that clause?

11 DELEGATE CASE: That is correct.

12 DELEGATE CHABOT: So that what we would have --

13 THE CHAIRMAN: Delegate Case's answer wasn't on  
14 the tape.

15 DELEGATE CASE: That is correct.

16 THE CHAIRMAN: Delegate Chabot.

17 DELEGATE CHABOT: So that what we would have  
18 is, beginning at the bottom of line 50 and continuing through  
19 line 7 of page 5, a setting forth of power, with an excep-  
20 tion on lines 7 and 8, and then the added language being an  
21 exception to that exception?



1 THE CHAIRMAN: Delegate Case.

2 DELEGATE CASE: This is correct.

3 THE CHAIRMAN: Any further discussion?

4 Delegate Clagett.

5 DELEGATE CLAGETT: I would like to be most  
6 brief in adding these remarks to those that I have hereto-  
7 fore made in opposition to these intergovernmental authori-  
8 ties being given the tax power, and the additional remarks  
9 are, I don't like intergovernmental authorities, in any  
10 event. They are a necessity in order to provide a degree  
11 of flexibility insofar as governmental administration is  
12 concerned. However, during the years of the Commission  
13 work, we heard testimony from one expert after another,  
14 telling us that a proliferation of intergovernmental  
15 authorities was one of the worst kinds of problems in  
16 neighboring States, such as Pennsylvania, New Jersey,  
17 New York, and elsewhere, where throughout the State they  
18 had these intergovernmental authorities, and it was far  
19 more preferable to go in the direction of a regional  
20 government, whether it be popularly elected or some other  
21 type of regional government, rather than in the direction



1 of intergovernmental authorities.

2 What we are doing here is strengthening the  
3 intergovernmental authority as a unit of government and  
4 avoiding the day when we will have something that is far  
5 more preferable, far more clearcut, far more directly  
6 related to multi-purpose functions than these intergovern-  
7 mental units, which, true, may be multi-purpose, but us-  
8 ually are employed for single purposes.

9 To avoid that proliferation, to avoid that  
10 strengthening, to avoid that increased use of intergovern-  
11 mental units, I strongly urge we not give any additional  
12 power to it.

13 THE CHAIRMAN: Are we ready for the question?

14 The question arises on adoption of Amendment  
15 No. 10. A vote Aye is a vote in favor of the adoption of  
16 Amendment 10. A vote No is a vote against. Cast your  
17 votes.

18 Have all delegates voted? Does any delegate  
19 desire to change his vote?

20 Doorkeeper, are there any delegates immediately  
21 outside the door?







1                   Have all delegates now voted? Does any dele-  
2 gate desire to change his vote? The Clerk will record the  
3 vote.

4                   There being 44 votes in the affirmative and  
5 77 in the negative, the motion is lost, and the amendment  
6 fails.

7                   Are there any further amendments to section  
8 7.11?

9                   Are there any amendments to section 7.12?

10                  Are there any amendments to section 8.06?

11                  The Chair recognizes Delegate Moser to move that  
12 the Committee approve Committee Recommendation LG-1, as  
13 amended.

14                  DELEGATE MOSER: Mr. Chairman.

15                  THE CHAIRMAN: I don't believe a motion is  
16 necessary, Delegate Moser.

17                  The question arises on approval of Committee  
18 Recommendation LG-1, as amended. Are you ready for the  
19 question?

20                  A vote Aye is a vote in favor of the approval  
21 of Committee Recommendation LG-1, as amended; a vote No,



1 a vote against.

2 Sound the quorum bell, please. Cast your  
3 vote.

4 Has every delegate voted? Does any delegate  
5 desire to change his vote? The Clerk will record the vote.

6 There being 117 votes in the affirmative and  
7 7 in the negative, the Committee Recommendation LG-1 as  
8 amended is approved.

9 The Chair recognizes Delegate Powers.

10 DELEGATE POWERS: Mr. Chairman, I move the  
11 Committee of the Whole rise and report to the Convention  
12 its action with respect to Committee Recommendation LG-1.

13 THE CHAIRMAN: Is there a second?

14 (Whereupon, the motion was seconded.)

15 THE CHAIRMAN: All in favor, signify by saying  
16 Aye; contrary, No.

17 The Ayes have it. It is so ordered.

18 (The mace was replaced by the Sergeant at Arms.)

19 (Whereupon, at 1:07 p.m. the Committee of the  
20 Whole rose, and the Convention reconvened.)

21 THE PRESIDENT: The Convention will please come



1 to order.

2 On behalf of the Committee of the Whole, the  
3 Chair reports that the Committee of the Whole has had under  
4 consideration Committee Recommendation No. LG-1, and has  
5 approved the Recommendation, as amended.

6 The report of the Committee of the Whole is  
7 referred to the Committee on Style, Drafting, and Arrange-  
8 ment..

9 The Chair cannot resist saying that he con-  
10 gratulates the Assembly very heartily for speedy action  
11 on a very, very difficult task, and also congratulates  
12 the Committee chairman for a job well done. (Applause.)

13 : Are any delegates present now  
14 who were not present at roll call this morning? They  
15 may indicate their presence on the electronic board.

16 The Chair recognizes Delegate Malkus.

17 DELEGATE MALKUS: I would like to record my  
18 presence.

19 THE PRESIDENT: If the Chair may be permitted  
20 a personal reference, which is perhaps a violation of the  
21 rule of recognitions, the Chair would like to recognize



1 the presence in the gallery of my older daughter and my  
2 twelve-year old grandson, who happens to be my oldest  
3 grandson, and namesake. (Applause.)

4 The Chair recognizes Delegate Powers.

5 DELEGATE POWERS: Mr. President, I move we re-  
6 cess until 2:30.

7 THE PRESIDENT: Is there a second?

8 (Whereupon, the motion was seconded.)

9 THE PRESIDENT: All in favor, signify by  
10 saying Aye; contrary, No. The Ayes have it. It is so  
11 ordered.

12 (Whereupon, at 1:09 p.m., the Convention was  
13 recessed, to reconvene at 2:30 p.m. of the same day.)

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A F T E R N O O N   S E S S I O N

November 15, 1967 - 2:30 p.m.

THE PRESIDENT: The Convention will please come to order.

(Whereupon, the roll call was taken.)

THE PRESIDENT: Has every delegate answered roll call?

The Clerk will record the roll call.

Delegate Clagett.

DELEGATE CLAGETT: I rise to a point of personal privilege, Mr. Chairman, to say of record on behalf of each of the 20 members of the Local Government Committee and by 20 members that includes you among us, Mr. Chairman, as a member of that committee, how extremely proud we all are to have served under our Chairman and to have been present and participated in the magnificent performance that he presented for the benefit of this committee and the Convention as a whole. I want to say that each of us individually and collectively want to go on record to express our pride and gratitude to him.

THE PRESIDENT: As a member of that committee, I join in your statement. (Applause)

There was distributed on Monday several memoranda prepared by Delegate Finch. There was no comment made. I



1 mention it now so that you will know you have them.  
2 Memorandum accompanying Delegate Proposal 270, Delegate  
3 Proposal 430 and Delegate Proposal 432, the Report of the  
4 Committee of the Whole No. 5, heretofore delivered orally  
5 is now available in printed form.

6 The Clerk will read the report.

7 MR. QUILLEN: Report of the Committee of the Whole  
8 No. 5, this report covers matters in General Order No. 6,  
9 a report on Committee Recommendation S&E-1, Power of  
10 Referendum, Manner of Referral, Petition Provisions,  
11 Legislation Subject to Suspension, Effect of Referendum.  
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1           THE PRESIDENT: The report has heretofore been  
2 referred to the Committee on Style, Drafting and  
3 Arrangement. There is attached to the copy of Committee  
4 Recommendation S&E-1 so marked as to show all amendments  
5 made by the Committee of the Whole, Committee Recommendation  
6 R&P-1. The Clerk will read the recommendation.

7           MR. QUILLEN: "A recommendation that the  
8 Constitution contain a preamble followed by Article I, a  
9 Declaration of Rights, that shall read as follows:

10          THE PRESIDENT: Recommendation R&P-1 has been,  
11 is referred to the Committee of the Whole. The recommendation  
12 has been printed and distributed.

13          The Committee memorandum is in the process of  
14 being printed and will be distributed as soon as  
15 available.

16          Are there any other motions or resolutions? if  
17 not, the Chair recognizes Delegate Powers.

18          DELEGATE POWERS: Mr. President, I move the  
19 Convention resolve itself into the Committee of the Whole  
20 for the purpose of considering Committee Recommendation  
21 JB-1, subject to control and limitation on debate as  
set forth in Debate Schedule No. 4.

THE PRESIDENT: Is the motion seconded?

(Whereupon, the motion was seconded.)



1           THE PRESIDENT: All in favor signify by saying  
2     Aye; contrary, No. The ayes have it; so ordered.

3           (Whereupon, at 2:40 o'clock p.m., the Convention  
4     resolved itself into the Committee of the Whole.)

5           (The mace was removed by the Sergeant at Arms.)

6           THE CHAIRMAN: The Committee of the Whole will  
7     please come to order.

8           The matter for consideration is Committee  
9     Recommendation JB-1 under Terms of Debate Schedule No. 4.  
10    The Chair recognizes Delegate Mudd, Chairman of the  
11    Committee on Judicial Branch and requests he come forward  
12    and present the report.

13          DELEGATE MUDD: Mr. Chairman.

14          THE CHAIRMAN: Delegate Mudd.

15          DELEGATE MUDD: Ladies and gentlemen of the  
16    committee, --

17          THE CHAIRMAN: Just a second, Delegate Mudd.  
18    For what purpose does Delegate Malkus rise?

19          DELEGATE MALKUS: Mr. President, I will ask  
20    the Chairman if he will yield to a question.

21          THE CHAIRMAN: I think the proper time for the  
   question is, Delegate Malkus, after the Chairman has presented  
   his report and he has not even started to speak. Do you  
   have a parliamentary inquiry to the Chair?







1 DELEGATE MALKUS: I believe that is all in order.  
2 Am I not correct?

3 THE CHAIRMAN: Yes. Address your parliamentary  
4 inquiry to the Chair.

5 DELEGATE MALKUS: Mr. President, since this is  
6 certainly the most controversial and biggest issue before  
7 this convention, I was hopeful that the Chairman would  
8 do as he does when he is before the Court of Appeals and  
9 yield at any time on any subject matter that a just would  
10 ask him a question. We are here today as judges of his  
11 report. I know we are limited by time, I do not think it  
12 is enough time. As we go through this article and as the  
13 able Chairman explains it, my question to him is this:  
14 Would he yield as each question does come to our minds?

15 THE CHAIRMAN: I am not at all sure I understand  
16 what your question is, Delegate Malkus, but I will tell you  
17 the procedure that will be followed in accordance with  
18 the rules previously announced and in accordance with the  
19 debate schedule.

20 You have here one report of the Committee  
21 and one Minority report. The procedure to be followed is  
that the Chairman of the Committee will make a general presentation of the entire article and will then answer questions pertaining to the entire article without specific reference



1 to the various sections.

2 The Minority spokesman will then make a similar  
3 report or presentation of the minority position. The  
4 Minority spokesman will be subject to questioning in the  
5 same manner.

6 After that is concluded, the Chairman of the  
7 Committee will make a presentation of the first part  
8 of the article embraced within the general term "court  
9 structure" embodying sections 5.01 to 5.11. He will be  
10 available for questioning.

11 The Minority spokesman will then present views  
12 of the Minority with respect to those same sections.

13 We will then consider amendments to those sections.  
14 Debate will be in accordance with the debate schedule.

15 After that is concluded, we will follow the same pro-  
16 cedure with respect to the next portion of the report,  
17 Judicial Selection, Tenure and Removal, and following that  
18 again with the final portion of the article, Administration  
19 and Rule-making Power.

20 That is the procedure that is set out in the  
21 debate schedule which has been adopted by the Convention.

DELEGATE MALKUS: Mr. President.

THE CHAIRMAN: Delegate Malkus.

DELEGATE MALKUS: In other words, if we had a



1 pertinent question on a point at the proper time as it  
2 was being discussed, if we rose to ask that question,  
3 we would not be allowed to ask the question at that time.

4 THE CHAIRMAN: You will not be allowed to interrupt  
5 the presentation either by the Committee Chairman or the  
6 Minority spokesman.

7 There will be ample opportunity for questions  
8 upon completion of their presentations.

9 Delegate Malkus.

10 DELEGATE MALKUS: You think the procedures used  
11 by courts of appeals -- I have not been there as often  
12 as you have, but they ask questions at any time, on anything,  
13 whether on the subject matter or not -- you think their  
14 procedure, then, is wrong?

15 THE CHAIRMAN: I did not say that and I do not  
16 think so, but we are dealing with an entirely different  
17 situation. We have 142 delegates, not seven.

18 Delegate Mudd.

19 DELEGATE MUDD: Thank you, Mr. Chairman.

20 Perhaps out of order but by way of anticipating,  
21 I had visualized the audience as a jury of 142 people, not  
the court of appeals of 142 judges. But I probably stand  
to be corrected in the course of this presentation.

May I say preliminarily, ladies and gentlemen





1 of the committee, that the Minority Report in its first  
2 line says that it is a minority report and not a Dissent.  
3 To me that is significant in view of the fact that the  
4 Minority Report apparently confirms and recognizes that the  
5 situation in Maryland in the matter of court structure and the  
6 administration of justice does require improvement in order  
7 to meet the needs of our state with its increased population,  
8 more automobiles, more administrative regulations, and  
9 all of which has in many instances swamped our courts with  
10 ever-increasing caseloads and in many areas the courts may be  
11 said to be snowed under with litigation.

12 Accordingly, I hope we can begin by assuming there  
13 is a job to be done and that the minority view is not a  
14 dissent but a minority view as to how it might be done.

15 Committee Recommendation No. JB-1 of the Judicial  
16 Branch proposes an entire judiciary article for the new  
17 Maryland Constitution. The recommendation provides the  
18 basic framework for a simplified unified court structure  
19 within which the overall administration of justice can most  
20 effectively function.

21 Our recommendation has been described in the  
press as bulky. But it was only after careful consideration  
that the committee decided to make a single complete report  
to this Convention rather than partial reports covering





1 component parts of the article.

2 The compelling reason for the one report is the  
3 interdependence of the component parts of the article. Divi-  
4 sions of the recommendation by subject matter cannot  
5 properly be evaluated except in relation to the final recom-  
6 mendation of the committee in other areas.

7 For instance, if the legislature in some area should  
8 provide for a multi-county district court, as it is allowed  
9 to do by Section 510, its operation and function cannot be  
10 properly evaluated except in relation to Section 530, which  
11 requires a clerk of the district court in each county.

12 As I have indicated, during recent years much  
13 thought and effort has been devoted to improvement of the  
14 judicial system of Maryland.

15 Judges, lawyers and laymen are agreed that  
16 improvement is necessary to meet the changing circumstances  
17 and new conditions which generate an ever-expanding caseload.

18 In some areas improvement cannot be accomplished  
19 without reform and reform requires a break with tradition.  
20 There probably cannot be a model judiciary article until  
21 we first have the model state to adopt it.

The recommended judiciary article does not in  
some instances follow the desired general approach in



1 drafting as we might prefer, and as that contained in  
2 the U. S. Constitution. On the other hand, it avoids  
3 the completely detailed approach of Article IV of the  
4 prsent Maryland Constitution.

5 The majority view of my committee could not be  
6 presented to this Convention by the simple framework for  
7 an improved, unified and uniform judicial system without  
8 mandating some reform and Guidelines.

9 At the same time, flexibility is not restricted.  
10 The legislature has the power to prescribe the jurisdiction  
11 of the several courts and to provide the judicial manpower.  
12 Likewise, the power reserved to the court to provide for  
13 functional divisions, to adopt rules of practice and  
14 procedure and temporary assignment of judges to provide  
15 added flexibilities in accommodating the needs within the  
16 unified court structure.

17 In the reform area is the recommendation that  
18 the state assume full and complete financial responsibility  
19 for hte poper administration of justice. This is a  
20 departure from the existing system by which this responsi-  
21 bility is shared with the political subdivisions.

It may have been practical at other times for  
state and local governments to share financial responsibility  
for the courts, but the concept of a unified judicial system



1 for the state requires that the state assume the  
2 full financial burden; otherwise, improvements would be  
3 stifled and expansion of facilities prevented.

4 In that part of the recommendation dealing with  
5 selection and tenure of judges the committee has departed  
6 from the general constitutional approach and embodied  
7 in its proposed Article V the essential characteristics  
8 of the Missouri Plan, sometimes referred to as the American  
9 Bar Association or Merit Plan and in Maryland as the  
Niles Plan.

10 At the close of the 1966 session of the General  
11 Assembly, it had pending before it proposals by the  
12 Maryland State Bar Association and the Maryland Judicial  
13 Selection Council for amending the Maryland Constitution  
14 with regard to the method of selecting judges.

15 Some of these proposals were embodied in the bill  
16 which passed the House of Delegates but was not passed in the  
17 Senate. Instead the Senate sent the bill back to its  
18 Committee on Judicial Proceedings in order that it might  
19 be referred to the Constitutional Convention Committee for  
its study and consideration.

20 Therefore, in considering this phase of its work  
21 your Constitutional Convention Committee on the Judicial  
Branch had before it House Bill No. 418 with its legislative





1 history as well as the benefits of extensive work  
2 of the Study Commission and others in the field of  
3 selection and tenure of judges.

4 It was the legislative history of House Bill  
5 No. 418 and the testimony before our Committee of responsible  
6 legislative leaders which suggested that the committee's  
7 recommendation in this field of selection and tenure embody  
8 the essentials rather than the conventional approach in  
9 constitutional drafting if overall improvement in the  
10 administration of justice for Maryland is to be achieved  
11 as our committee deems it should.

12 In the matter of removal and retirement of judges  
13 the committee recommendation again includes the essential  
14 details of the plan.

15 After careful consideration of Commission on  
16 Judicial disability provisions of the present constitution,  
17 as well as the Study Commission draft of its section on  
18 removal of judges and hearing a wealth of testimony from  
19 proponents of delegate proposals and others on this subject,  
20 the committee recommendation adopts the so-called California  
21 Plan. This recommendation spells out the essential details  
of the plan, but the provisions covering this proposal again  
point up that the suggested Article 5 must be considered  
as a package, because the broad rule-making power vested





1 in the Court of Appeals by Section 531 of the recommendation  
2 is needed to implement this plan.

3 The committee recommendation provides that  
4 the chief judge of the Court of Appeals be administrative  
5 head of the judicial system.

6 The power thus vested in the chief judge coupled  
7 with the power of the highest court to provide by rule for  
8 other administrative judges to be appointed by the chief judge  
9 is essential to the efficient and orderly functioning  
10 of the proposed unified courts.

11 Without mandating the administrative responsibility  
12 and granting power to make the system operable, our recommenda-  
13 tion would have been incomplete.

14 In drafting its recommendation the committee has  
15 thus attempted to adopt a middle ground; that is, the  
16 general approach wherever possible, but essential detail in  
17 those areas where guidelines for the General Assembly and  
18 the Court in exercising its rule-making power were deemed  
19 basic to accomplish the desired improvements.

20 The organization of the committee recommendation is  
21 patterned generally on Article V drafted by the Constitutional  
Convention Commission. A brief explanation of the recommenda-  
tion by comparison with the Study Commission draft and  
the corresponding provision in the present Constitution



1 may be helpful to the Committee of the Whole.

2 In this brief review, therefore, ladies and  
3 gentlemen of the Committee, I now would like to direct  
4 your attention to those sections of the Committee Recommenda-  
5 tion JB-1 Nos. 501 through 511 and which deal with  
6 with the vesting of the judicial power of the state, the  
7 composition of the courts and their jurisdiction.

8 These eleven sections initially vest the  
9 judicial power of this state exclusively in the four tier  
10 system composed of two appellate courts and two trial courts  
11 namely the Court of Appeals, intermediate Court of Appeals  
12 Superior Court and District Court.

13 In this regard you may note it was the majority  
14 view of our committee that the name Court of Appeals  
15 be retained and that the name Supreme Court suggested by  
16 the Commission draft not be used; retaining the name of the  
17 Court of Appeals of course necessitated in our view that  
18 intermediate be used to further identify the second tier  
19 court, namely, the intermediate appellate courts.

20 The Superior Court name adopted, trial court,  
21 original jurisdiction replaces the name circuit court now in  
use and District court replaces the trial magistrate  
system and people's court where they do exist in the  
several jurisdictions.



1           Section 502 vests in the Court of Appeals  
2 Such appellate jurisdiction as prescribed to it by  
3 law and the original jurisdiction prescribed by this  
4 Constitution. In that regard there is slight variance  
5 from the suggested draft language in the Commission's  
6 recommendation. It seemed desirable from the viewpoint  
7 of the majority of our committee that appellate jurisdiction  
8 be vested exclusively in the highest tribunal of the state  
9 except in the areas in which it is given original jurisdiction  
10 by the Constitution. Those three instances being only  
11 with reference to reapportionment, redistricting, secondly the  
12 matter of manner of succession in event of vacancy in the  
13 Office of the Governor, thirdly, in the manner which  
14 this draft is adopted will delegate to the highest court, that  
15 is dealing with the matter of retirement, censure, and removal  
16 of judges.

15           The composition of the Court remains the same as  
16 at present namely seven judges, and the only addition we made  
17 in that section is to provide that one of those shall  
18 be designated Chief judge as is subsequently provided, be  
19 appointed by the Governor.

20           The intermediate appellate court shall have the  
21 jurisdiction prescribed by law on the basis of the recommenda-  
tion of the majority report.





1  
2 In that regard it is anticipated that the work  
3 of this court must necessarily be expanded and conceivably  
4 it may be desirable to vest in that court original  
5 jurisdiction in some limited areas, for instance, as has  
6 been suggested, possibly in the area of disbarment pro-  
7 ceedings.

8 The intermediate appellate court shall be  
9 composed of no fewer than five judges, it being recognized  
10 that the legislature in its wisdom may find it necessary  
11 to enlarge and expand the jurisdiction of their court  
beyond that now delegated to it.

12 The jurisdiction of the superior court as well  
13 as that of the district court is such as is prescribed by  
14 law, but it must be uniform at both of these courts within  
15 the trial level.

16 With respect to Section 5.08 and 5.10 dealing  
17 with composition of the superior court and composition of  
18 the district court, may I call your attention to the  
19 addition made by the committee recommendation to add this  
20 language in both instances; namely, functional divisions  
may be established in any county as prescribed by rule.

21 In the view of the majority of the committee, this





1 is flexibility that well may be needed to accommodate  
2 the four-tier court structure to the needs of a particular  
3 jurisdiction.

4 In our view, such a functional division might  
5 be a juvenile court. Such a functional division by  
6 rule might likewise continue the distinction they now have  
7 in Baltimore City at the court of limited jurisdiction where  
8 the municipal court I believe handles the criminal  
9 jurisdiction and the people's court the civil jurisdiction.

10 Section 5.11 of this area deals with the  
11 appointment of commissioners and the General duties  
12 assigned to commissioners is comparable to that now performed  
13 by the committing magistrates.

14 The draft section proposed by the committee  
15 recommendation is that these commissioners shall exercise  
16 the powers prescribed by rule and be appointed by the  
17 judge of the district court.

18 The next subject matter in the recommendation  
19 is that covered by Section 5.12 through 5.24 dealing with  
20 selection and tenure. In this regard may I remind you  
21 of my previous statement that in the view of the committee  
this section is detailed.

It does provide that the manner prescribed in this



1  
2 recommendation applied to selection and tenure of judges  
3 at all levels, that is, the highest court, intermediate  
4 appellate court, superior court and the district court.

5 The draft of these sections follows substantially  
6 the draft of the Study Commission.

7 With respect to eligibility, however, we have  
8 added the requirement that a nominee to be eligible for  
9 appointment shall have been a citizen for five years rather  
10 than, as the Commission study recommended, only that he  
11 be a citizen at the time of appointment.

12 In the appellate court's nominating section the  
13 only change recommended by the majority report is that  
14 one of the judges of the court of appeals and not the chief  
15 judges be a member of the nominating commission.

16 With respect to the trial court's nominating  
17 commission, the number and composition, terms of their of-  
18 fice shall be prescribed by law, shall be an equal number  
19 of lay and lawyer members and one judge.

20 Substantially it is the same as the commission  
21 draft.

Section 5.19 dealing with the judicial member  
of the nominating commission, there has been a slight change



1  
2 in the committee recommendation and that is that the  
3 judicial member of the appellate court nominating commis-  
4 sion shall be appointed by the Court of Appeals and  
5 previously by commission draft it was provided as prescribed  
6 by law.

7 Section 5.20, providing the rules governing  
8 nominating commissions, that has been made somewhat more  
9 restrictive than the draft proposed by the Study Commission.  
10 A non-judicial member of the Commission may not hold any  
11 public office, in the committee recommendation as dis-  
12 tinguished from state or local office in the Commission  
13 draft. Also, our recommendation is that a non-judicial  
14 member of the nominating commission shall not be eligible  
15 to hold a judicial office for two years immediately  
16 following his service on the Commission and he shall not  
17 be eligible to hold any other public office of profit  
18 for one year immediately following his service.

19 Section 5.21, dealing with terms of office  
20 except for changes in style and drafting is substantially  
21 the same as the recommendation of the Study Commission.

Section 5.24, the last section dealing with this  
subject matter, restriction of non-judicial activities.





1  
2  
3       The restrictions have been enlarged in the  
4 committee recommendation. The language which we have added  
5 is that no retired judge while engaging in the practice  
6 of law or running for elective office or holding any  
7 public office of profit shall be paid any pension for his  
8 judicial services.

9       The next subject matter covered in the committee  
10 recommendation is that dealing with removal and retirement  
11 of judges and covered by Sections 5.25 through 5.28.  
12 As indicated before, this matter was considered at some  
13 length by your Committee on the Judicial Branch. We have  
14 made a substantial departure from the existing law as  
15 contained in the present constitution as well as the  
16 recommendation by the Study Commission.

17       In essence the Committee on the Judicial Branch  
18 in its majority report has adopted the California plan.  
19 It sets up the Judicial Disabilities Commission, provides  
20 the manner in which such Commission shall proceed.

21       It shall make recommendations for removal or  
retirement and ultimately the Court of Appeals has the  
final authority to determine whether a judge on the  
recommendation of the Commission might be removed, retired





1  
2 or censured, the "or censured" being, I understand, the  
3 only inclusion in this recommendation not presently  
4 part of the California plan.

5 It is our information that those familiar with  
6 the California Plan now say its plan should include the  
7 power of censure.

8 By virtue of that recommendation, the majority  
9 report includes the power of the court of appeals to  
10 censure.

11 The next subject matter dealt with in the commit-  
12 tee report is that of administration of the judicial  
13 system and which to the committee seemed a most integral  
14 and necessary part of its responsibility.

15 Basically, the recommendation in this regard is  
16 that the chief judge of the court of appeals be the  
17 administrative head of the court system. He has the  
18 right to appoint chief judge who shall perform some  
19 administrative duties as shall be prescribed by rule  
20 and in addition the court of appeals by rule may provide  
21 for other administrative judges in addition to the  
chief judges to perform such functions as prescribed by rule.



1           The administrative responsibility under the  
2 court system as proposed of course will be a substantial  
3 responsibility and in the view of the majority of the  
4 committee it was imperative that the recommendation of  
5 the committee include guidelines in this area to be  
6 covered by the rule-making power of the Court of Appeals.

7           With respect to the matter of clerks of court,  
8 the committee recommendation is identical with the draft  
9 article except in one respect. That is that the clerk  
10 of the Superior Court in each county on the basis of the  
11 committee recommendation shall be selected as prescribed  
12 by law. In other respects this section follows the sub-  
13 stance at least of the draft proposed by the Study Com-  
14 mission.

15           The final section, that dealing with rule-  
16 making power of the Court of Appeals, likewise follows  
17 the existing situation and the proposed draft by the  
18 Study Commission.

19           It is the conclusion of the majority of the  
20 Committee on the Judicial Branch that the present system  
21 has worked well. There has been complete compatibility



1 between the Court of Appeals and the General Assembly  
2 in the exercise of their respective functions in this  
3 area, and the only thing that the committee recommendation  
4 does that was not entirely clear in the draft or in our  
5 view was not entirely clear in the draft submitted by  
6 the Study Commission is to emphasize by language we have  
7 added that the last in point of time, that is, rule or  
8 law, shall supersede, the language exactly being this,  
9 the later in time, that is in event of conflict when  
10 rule and law shall supersede it prior to the extent of  
11 the conflict, we do define the rule in this article to  
12 mean rule adopted by the Court of Appeals.

13 That ladies and gentlemen of the committee,  
14 hopefully within the suggested time limit is a brief  
15 summary of the recommendation of the Committee on the  
16 Judicial Branch as to what should be included in Article  
17 5 to improve and reform to some extent the judicial arm  
18 of government in the State of Maryland in the new Consti-  
19 tution.

20 THE CHAIRMAN:

21 As I indicated earlier in response to the  
questions of Delegate Malkus, there is a period now for



1 questioning but this is only a general presentation.  
2 Time is limited under debate schedule. I would hope ques-  
3 tions would be limited only to the arrangement of the  
4 section. There will be ample time for questions as each  
5 part of the article is presented.

6 Are there any questions as to general presenta-  
7 tion? If not, the Chair recognizes Delegate Johnson to  
8 make a general presentation of the minority report.

9 Delegate Johnson, please come forward to the  
10 reading desk.

11 DELEGATE JOHNSON: Mr. Chairman, I would like to  
12 open by noting that we all have a deep moral commitment  
13 to our task here. I would note further that our task has  
14 been greatly facilitated by the remarkably fine efforts  
15 of the Constitutional Convention Commission, which preceded  
16 this conclave, a fact which gives heart to those of us  
17 who have been concerned by the devastating defeat of the  
18 New York Constitution recently, and the notable lack of  
19 success of the Rhode Island Convention.

20 I say this because some participants and observers  
21 of these two experiments have expressed the feeling that







1 these two states made fundamental error in not providing  
2 for and relying on well-prepared Commission studies.

3 I must admit I have heard some dissidents in  
4 this state complain that the Maryland Convention is  
5 nothing more than a ratifying body for the Commission  
6 draft. However, lest the majority of the Committee on  
7 the Judicial Branch be chastised for being wedded to the  
8 Commission draft, let me be the first to confess  
9 the minority loves the draft too.

10 Although we feel we are as morally committed  
11 to our task as the majority upon the grounds let's say  
12 of incompatibility, we are filing for a divorce a mensa,  
13 a partial divorce if you will, with the hope that at the  
14 conclusion of the debate the Committee of the Whole have  
15 effected a reconciliation.

16 It is interesting to observe the staffing of  
17 our Judicial Committee with 14 lawyers and six non-  
18 lawyers. One might surmise that the line-up would be  
19 lawyer versus layman. That perhaps was the case for a  
20 while, but as lawmakers as well as law enforcers and  
21 those responsible for adjudication appeared before the



1 committee, the thoughtful and penetrating analyses of  
2 some of the supposedly naive layman complemented, I might say  
3 by many members of the Judiciary, convinced at least a  
4 few of us who have intimate day-to-day contact with the  
5 courts that we should not be meek sheep following a legal  
6 shepherd. No pun intended, Mr. Chairman.

7 Thus some differences arose among lawyers on  
8 the committee and that produced a somewhat different  
9 minority than might have been anticipated.

10 In passing you should be made aware of the fact  
11 that on several incidental issues over one-third of the  
12 committee voted against the majority. Analysis of the  
13 votes on this matter does not indicate a consistent pat-  
14 tern. Indeed we have sought to provide a sounding board  
15 for several members of the majority by including some  
16 of these issues in our report because they should be  
17 considered, not necessarily debated at length but con-  
18 sidered by this body.

19 Some other matters of very considerable im-  
20 portance contained in our report, this being missed being  
21 the majority by only one vote. We do indeed, as Chairman



1 Mudd has indicated, endorse many provisions in the  
2 Committee Recommendation JB-1, although I understand  
3 some of the members of the majority are still searching  
4 for those areas of agreement. Let us keep constantly  
5 in mind that the Judicial Branch is the most potentially  
6 tyrannical of the three branches of government with re-  
7 spect to individual liberties: first, because its actions  
8 directly and explicitly affect specific individuals;  
9 second, because its officers are most insulated from  
10 popular control; third, because its activities receive  
11 the least public scrutiny.

12 Let me emphasize that we are in no way criti-  
13 cizing past or present members of the Maryland Bench.  
14 Indeed, when we recall the names of such outstanding jur-  
15 ists as Carroll T. Bond, Edward S. Deleplane, Simon E.  
16 Sobeloff, presently a distinguished member of the U. S.  
17 Court of Appeals, F. Niles Park, Frederick Brun and  
18 Hall Hammond, presently our Chief Judges of the Court  
19 of Appeals. I should say at this point I will not em-  
20 barrass the noted judges sitting among us by personal  
21 reference, wherein we recall these men, ones I mentioned





1 and many others, we know the State Bench has been and  
2 is manned by highly qualified dedicated public servants.

3 I would also note that these men have served  
4 under the present appointive elective system, a system  
5 which the Institute of Judicial Administration has called,  
6 and I quote, "basically sound with some features far in  
7 advance of those found in many other jurisdictions, a  
8 system that ought not to be scrapped but one that deserves  
9 and needs to be improved and strengthened."

10 We of the minority are anxious to improve and  
11 strengthen the courts by modifying and in some cases  
12 going beyond the recommendations of the majority of  
13 the Committee on the Judiciary.

14 As the majority was dedicated in the performance  
15 of its task, again let me emphasize the dedication of  
16 the minority to the improvement of the State Judiciary  
17 within the framework of a Republican form of government.  
18 To give just one example, the very significant matter  
19 of establishing a Commission on Judicial Disability  
20 would not have passed this committee without the whole-  
21 hearted support of the signatories of this minority





1 report. That we submit would have been a loss for a  
2 responsible judiciary and a defeat of good government.

3 You could say the minority is arguing for a  
4 more responsive, a more public bench, one which will  
5 continue as a coordinate branch of government subject to  
6 checks by the other two major branches as well as peri-  
7 odic public check. Does this mean perhaps that the  
8 minority represents a visionary ultraliberal point?

9 If retaining some rights in the citizens for  
10 their elected representatives to matters pertaining to  
11 the Judicial Branch, if that is liberal, then we accept  
12 the appellation. Certainly the majority is dedicated to  
13 those matters, to those alleged progressive principles  
14 of a strong independent judiciary.

15 This of course is not surprising for the  
16 majority of twelve is composed of eleven lawyers and  
17 the spouse of one.

18 The background of the minority is somewhat more  
19 diffuse, two of us are attorneys, one a labor leader,  
20 one a legal secretary, one a school teacher, two are  
21 members of the legislature. We are I believe a



1 representative body certainly, no better than the majority  
2 but I submit of concurrent jurisdiction.

3 We likewise wish the Judiciary to be represen-  
4 tative of the best legal thought in the state, but that  
5 alone is not enough. While being people with outstanding  
6 independent-thinking public servants, the Judiciary must  
7 also be responsive to the needs of the citizens. None  
8 of us, excuse me, those of us supporting the minority  
9 report of this committee were motivated by desire to see  
10 even greater improvement in our State Judicial System than  
11 some of our colleagues on the majority. The improvements  
12 we seek are directed primarily, but certainly not exclu-  
13 sively toward insuring that this branch will operate in  
14 concert with established principles of government.

15 Because I am confident you have at least  
16 perused our minority report and since we will later dis-  
17 cuss each amendment to the report of the majority, in  
18 detail, I will limit my remarks to those matters we  
19 consider to be of the greatest import, together with a  
20 very brief philosophy behind our position.

21 First, let us look at selection of judges.



1           Although a four-tier system of state courts is  
2 anticipated, a matter we partially support, you should  
3 view this as a dual arrangement. That is, we will have  
4 trial courts and appellate courts. Certainly this divi-  
5 sion is extremely important for, one, the overwhelming  
6 majority of citizens involved in either civil or criminal  
7 trials are concerned only with trial courts. The judi-  
8 cial process at this level is a very personal one and  
9 the judicial officers of the courts must be acutely  
10 conscious of the human element in justice not only from  
11 the standpoint of plaintiff and defendant, but also  
12 with respect to the jury when one is involved.

13           Judges of the court at the trial level are  
14 very much public officers. They are involved daily with  
15 the citizens and they should be responsible to the citi-  
16 zens. This does not mean trial court judges should allow  
17 opinions to affect their decisions, I mean public  
18 opinions. An extended term of office as we propose in  
19 the minority report would insure against this prospect  
20 and judges elected thereunder will continue to apply the  
21 law and not concern themselves with popularity polls.





1           Our proposal means, however, that the judges  
2           should not consider themselves completely detached from  
3           the general public. Clearly appellate court functions  
4           differ from trial courts. On the appellate level inter-  
5           pretation of the law is the essential point of dispute.  
6           Naturally the public may well be concerned with the out-  
7           come. Indeed reporting of cases decided at this level  
8           tends to be more complete than at the trial level. Still  
9           these are much less public courts simply because it is  
10          lawyer versus lawyer or issue versus issue with no  
11          witnesses and no jury.

12                 Attributes called for in a trial judge are not  
13          identical with judges serving on an appellate level,  
14          although indeed many outstanding appellate court judges  
15          have carried their highly desirable judicial trial  
16          court traits to our appellate courts.

17                 The relationship between citizen and judge  
18          likewise is quite different. We feel the selection  
19          process employed in filling judicial vacancies at these  
20          two different levels should also be different. We en-  
21          dorse the use of judicial nominating commissions for





1 judges of appellate courts. That is, the proposed Court  
2 of Appeals and the intermediate Appellate Court, although  
3 we strongly recommend that such commissions not include  
4 a judge as a member.

5 There are some extremely important reasons why  
6 we would rather see judges at the trial court level  
7 selected in essentially the same manner as is presently  
8 employed.

9 For one, we wish to have the public participate  
10 actively in the selection of trial judges. By first  
11 having the governor appoint a judge, then having him run  
12 in an open election, the public will be able to express  
13 itself on both the wisdom of the governor and the compe-  
14 tence of his appointee.

15 A simple yes or no vote, on a judge who has served  
16 for two years or so is not nearly the same as a vote for  
17 a specific candidate. An important factor here is that  
18 citizens may well either blindly vote yes or, worse,  
19 not vote at all when called upon to consider a judicial  
20 selection where they have no control over future selection.

21 Our proposed amendment to the report of the

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1 Judicial Branch would eliminate judicial nominating com-  
2 missions for Superior Courts and District Courts. It  
3 would have the governor appoint judges for two years, then  
4 have the new appointees run in open election against any  
5 qualified person who either felt the appointee had not  
6 adequately performed his duty to date or he felt that  
7 he could perform the judicial function better.

8 This is a far more responsible approach than  
9 that offered by the majority for these reasons:

10 First, the judge initially is appointed by the  
11 governor, our Chief Executive, and not after his alterna-  
12 tives have been reduced to as few as two by a nominating  
13 commission responsible to no one.

14 The appointment in this manner we add is arrived  
15 at from the whole range of all possible appointees.

16 Second, the election contest is open rather  
17 than limited simply to ratifying the appointment virtually  
18 controlled by the nominating commission. The appointee  
19 knows clearly he holds office at the will of the citizens  
20 of his community or state. Assuming that the citizens of  
21 Maryland will always retain the inherent right to control



1       their government, we feel this is a right and proper  
2       policy.

3               We will admit that our proposal may allow for  
4       some politicking in the office of the Chief Executive.  
5       But we ask the majority to consider the possibility of  
6       a closed door maneuvering on the part of the nominating  
7       commission; at least under our proposal the maneuvering,  
8       if any, is out in the open for everyone to see.

9               These conflicting views, together with the  
10       fact that the successful nominee under our proposal ultimately  
11       will have to satisfy the public that he is a  
12       better man for the job than some other candidate for  
13       judge persuades the minority to urge adoption of its  
14       amendment to the majority report.

15              Under the proposal submitted by the majority,  
16       the appointee will be virtually assured of continuance  
17       in office regardless of his lack of capability and misconduct  
18       short of removal.

19              The national history of judicial elections under  
20       the so-called Missouri Plan, the plan proposed by the  
21       majority, only two judges have been removed from office





1 by the electorate. There are various opinions why this  
2 occurred even on those two occasions. But largely these  
3 opinions are based on conjecture.

4 Another factor causing us to oppose this pro-  
5 posal of the majority is the fact that the local court  
6 in some counties is too small to produce good men to sit  
7 on nominating commissions and for good men to accept  
8 judgeships under consideration.

9 One county in the state has only approximately  
10 six practicing attorneys, at least five other counties  
11 have fewer than 30 lawyers.

12 The nominating commission plan promises to work  
13 quite effectively for appellate courts which have a  
14 much larger geographic jurisdiction, but it seems quite  
15 unrealistic to the minority to have this procedure in  
16 the localized trial court area.

17 I have gone into some detail with respect to  
18 the selection of judges at trial court level because this  
19 issue is illustrative of our concern that democratic  
20 principles should be applied to the Judicial Branch as  
21 well as the Legislative and the Executive Branches.





1           We want to see an independent but responsible  
2 Judiciary and we are especially anxious that judges at  
3 the trial court level fully recognize that they are  
4 responsible to the people and have to answer to them at  
5 least one time in 16 years.

6           Keeping in mind the fact that our concept of  
7 responsible representative government calls for reason-  
8 able and logical checks of authority, we hope you will  
9 cast an especially critical eye on the recommendations in  
10 the majority report with respect to the selection of  
11 nonjudicial officers of the court; I refer specifically  
12 to Section 5.11; which deals with appointment by the  
13 court of the commissioners after first creating the  
14 Office of Commissioner, and Section 5.30 wherein it is  
15 provided in the majority report that the court will ap-  
16 point the clerks on the District Court level.

17           Where control over this matter traditionally  
18 has been in the hands of the legislature which, as the  
19 representative body of the people, may appropriately  
20 use its authority as a check on potentially excessive  
21 judicial independence, the majority wishes to further



1 free the Judiciary from this restraint.

2 In this respect I fear the majority has equated  
3 freedom with license. We simply wish to move toward the  
4 direction of moderation.

5 The other matter I intend to mention in these  
6 remarks also bears on our concern that the Constitution  
7 itself should provide for a Republican form of government  
8 in character. I am sure we all agree that a basic tenet  
9 of good government is responsiveness to the needs of the  
10 people. This clearly means that a constitution must be  
11 general in nature, thus allowing a substantial degree of  
12 flexibility as time and conditions change. We are not  
13 for generalities per se in a constitution, but neither do  
14 we wish to see too many absolutes with respect to possible  
15 modification in organization and administration of govern-  
16 ment.

17 Here, fellow delegates, is where some proponents  
18 of the commission draft with a parochial view I submit  
19 have departed from preferential constitutional drafts-  
20 manship. In too many situations they have become abso-  
21 lutists. Here are some examples.



1           While we approve of a four-tier court system for  
2 Maryland, we do not believe that forever and all time  
3 these will be the only courts needed by the citizens of  
4 this state. We therefore wish to remove this nonflexible  
5 and final language and allow future creation of courts  
6 to the legislative process.

7           Likewise we see no valid reason for constitu-  
8 tionally destroying the office of Register of Wills. In  
9 many localities these individuals perform vital services  
10 and their elimination will place undue hardship on resi-  
11 dents in the areas affected.

12           Let's leave some flexibility in the administra-  
13 tion of justice by allowing at least a degree of discre-  
14 tion with the lawmakers of the state.

15           As you all know from our printed report, we are  
16 not calling for the general retention of these offices  
17 but we do believe that in those cases where they are needed  
18 we should not have to return to either that difficult and  
19 generally unsatisfactory method of constitutional amend-  
20 ment or throw the problem in the lap of local government.

21           Ladies and gentlemen, as the Committee on





1 the Judicial Branch is called upon to offer improvements  
2 in the already sound State Judicial System and to analyze  
3 and constructively criticize the commission draft, so we  
4 call upon you to improve the generally sound recommenda-  
5 tions of the majority report, especially with respect to  
6 allowing the people some say in who will judge them.

7 With respect to allowing room for modification  
8 in judicial organization and administration, we ask only  
9 your careful consideration and logical application of  
10 often stated sound principles of government.

11 Fellow delegates, the Committee on the Judicial  
12 Branch of the Commission was composed entirely of lawyers.  
13 The majority of this body's Committee on the Judicial  
14 Branch consists of practically all lawyers. The minority  
15 is concerned that we may wind up accepting a judicial  
16 article written by lawyers and judges for lawyers and  
17 judges rather than by the people and for the people.

18 As noted in my remarks, I feel that the majority  
19 members mistakenly are of the opinion they are presenting  
20 a progressive stand as well-intentioned as they may be,  
21 whereas in fact they would have us return to the days of





1 yore when aristocratic judges stood aloof from the masses.  
2 We must not forget it is the masses, the people you will  
3 seek to serve with this new Constitution.

4 Thank you.

5 THE CHAIRMAN: Are there any questions of the  
6 minority spokesman with respect to the general presenta-  
7 tion? If not, we will proceed with consideration of the  
8 first portion of the article dealing with court structure.  
9 This embraces 5.01 to 5.11.

10 The Chair recognizes Delegate Mudd, Chairman of  
11 the committee for presentation of the committee's recom-  
12 mendation with respect to Sections 5.01 to 5.11.

13 DELEGATE MUDD: Mr. Chairman, at this time would  
14 it be appropriate for the Chairman of the committee to  
15 ask unanimous consent to make two small amendments in our  
16 committee recommendation?

17 THE CHAIRMAN: Dealing with this portion?

18 DELEGATE MUDD: Yes, one would deal with Section  
19 5.11 on page 4 in line 2. All we ask is to insert follow-  
20 ing the comma, after "arrest", the word "bail".

21 THE CHAIRMAN: Which line?



1 DELEGATE MUDD: Line 2, page 4, following the  
2 comma after the word "arrest" insert the word "bail".

3 THE CHAIRMAN: This Section 5.11, Committee  
4 Recommendation, page 4, line 2 following the comma follow-  
5 ing the word "arrest", insert the word "bail".

6 Is there any objection?

7 DELEGATE MUDD: Bail comma.

8 THE CHAIRMAN: Bail comma.

9 Any objection? In absence of objection, the  
10 Chair will regard the modifications as having been made.  
11 State the other modification.

12 DELEGATE MUDD: It does not deal with matter  
13 now here but I would like to do it. It is a matter of  
14 style and drafting.

15 Page 7, line 7, Section 5.22, change the word  
16 "justice" to "judge".

17 THE CHAIRMAN: Is there any objection? In  
18 the absence of objection, in Section 5.22, page 7, line  
19 7, change the word "justice" to "judge".

20 You may proceed, Delegate Mudd.

21 DELEGATE MUDD: Thank you, Mr. Chairman.



1           Again ladies and gentlemen of the committee,  
2           may I direct your attention to the Section 5.01 through  
3           5.11 dealing with court structure.

4           Here the Committee on the Judicial Branch  
5           accepted its first challenge, that is, accepted the re-  
6           sponsibility of upgrading the courts of limited jurisdic-  
7           tion in the State of Maryland. It is generally recognized,  
8           and I believe there is no dissent in the state, that to  
9           improve administration of justice in our great state the  
10          first responsibility is to improve it at the level dealing  
11          with the greatest number of people.

12          Our supporting memorandum has ample facts and  
13          figures to convince you we hope that at this level of  
14          our present court system there is chaos, to say the least.

15          May I call your attention to a release in the  
16          press over the weekend in which a judge, an apparently  
17          part-time judge in Baltimore County actually cried for  
18          help with respect to his court calendar and court facility  
19          in that great section of our state.

20          For those of you who may not have seen the  
21          comment in the press the facts were, as I recall, that





1 this part-time judge whose calendar began at 8:00 p.m.  
2 found himself faced with something over 150 cases on the  
3 calendar that day. The courtroom was crowded and the  
4 reporter noted that according to the mandate of the  
5 fire marshal only less than 50 people were allowed in  
6 the room at the same time. To accommodate his calendar  
7 on that date the enforcement officers who were required to  
8 be there to testify exceeded the number of people who  
9 were allowed in the room at one time.

10 To me that is typical of the situation which  
11 exists in some parts of the state in trying to administer  
12 justice through the present system of courts of limited  
13 jurisdiction.

14 Our proposal very simply adopts the so-called  
15 four-tier court structure. I am not able to say that  
16 such a four-tier system is now enjoyed by a majority of  
17 the states of this Union. On the contrary, the exact  
18 court structure recommended by your committee is in use in  
19 very few states. Our committee considered at some  
20 length the possibilities of a three-tier court structure.  
21 That would be two appellate courts plus one trial court





1 of general jurisdiction.

2 It was our considered view, after much research  
3 and thought, that the most feasible and practical manner  
4 of adopting into a unified uniform court structure the  
5 chaotic condition now existing in Maryland in the courts  
6 of limited jurisdiction was by adopting in the unified  
7 court system the fourth tier, namely the District Court,  
8 to take over the jurisdiction of the trial magistrates  
9 and people's courts and by whatever other name the  
10 courts of limited jurisdiction are now operating in the  
11 State of Maryland.

12 Basic to our recommendation is that courts at  
13 all levels shall be peopled by judges, full-time judges  
14 who are lawyers. We think without that requirement the  
15 situation cannot be improved to meet the expanding case  
16 loads and mounting litigation now rising and increasing  
17 from day to day in our complex society.

18 We acknowledge that the proposed court structure  
19 does not include in the plan the existing Orphans' Court  
20 system. As some of you may know, there has been a  
21 movement and recommendation in the state for years that



1 the probate courts in Maryland identified by the name of  
2 Orphans' Court be done away with. It has been accomp-  
3 lished in one jurisdiction, namely Montgomery County.

4 Adoption of this Committee Recommendation of a  
5 four-tier court system would necessitate the legislature  
6 delegating or prescribing the jurisdiction now employed  
7 by the Orphans' Court to probably the Superior Court,  
8 although it could as we understand it prescribe concurrent  
9 jurisdiction in probate matters as well as juvenile mat-  
10 ters in the District Court and the Superior Court. It is  
11 the view of the majority of this committee that the provi-  
12 sions for functions division is the flexibility that,  
13 the only flexibility, together with that reserved to the  
14 legislature to prescribe jurisdiction which is needed to  
15 accommodate the judicial needs of this state for the  
16 foreseeable future.

17 The idea of judicial revision would seem unneces-  
18 sary within the flexibility and latitude allowed by func-  
19 tional divisions and the power of the legislature to  
20 prescribe jurisdiction.

21 The recommended four-tier structure, with the



1 possibility of the legislature increasing the number of  
2 judges in the intervening Court of Appeals obviously  
3 contemplates that the appellate jurisdiction and possibly  
4 the original jurisdiction of that court might be expanded  
5 as the circumstances require.

6 Our recommendation does fix the number of the  
7 judges in the highest court at seven as it is now and con-  
8 templates that the purpose of that court will be appellate  
9 only.

10 We did after considerable consideration decide,  
11 as I indicated previously, to retain the name of Court of  
12 Appeals. In some measure that was motivated by sentiment,  
13 to a greater extent I think it was motivated by the desire  
14 of the committee and lawyers and judges of Maryland to  
15 retain the fine history and tradition of that court. It  
16 has enjoyed an enviable reputation throughout the country, and  
17 to perpetuate that reputation and allow the state to  
18 enjoy the tremendous prestige from prior decisions in the  
19 work of that court can best be preserved in the majority  
20 view of the committee by retaining the name Court of  
21 Appeals as the name for the highest court for the State





1 of Maryland.

2 We did with some reluctance abandon the name  
3 of Circuit Courts but improvement required that it be  
4 abandoned in place of Superior or Trial Courts because  
5 under the concept recommended by your committee, Circuit  
6 Courts or Trial Court is actually a misnomer.

7 Again may I ask you to make full use of the  
8 rather comprehensive memorandum we have filed in support  
9 of our recommendation. We feel there are facts and sup-  
10 porting data there to convince you we hope of the wisdom  
11 of the Committee's Recommendation having to do with  
12 court structure.

13 We feel that the suggestion of the committee in  
14 its recommendation for this four-tier system and the  
15 corresponding obligation of the state to take over full  
16 financial burden for the administration of justice is  
17 an improvement and a necessary one in order to provide  
18 the uniformity and facilities that the administration of  
19 justice requires in a great state like Maryland.

20 As some of you may know, the situation as to  
21 financial responsibility under the present system is





1 somewhat chaotic. There are jurisdictions, so our com-  
2 mittee was told, where the problem today in not being  
3 able to keep up with the case load is not lack of manpower  
4 but lack of facilities. If the political subdivision is  
5 financially unable or is for some reason unwilling to  
6 provide necessary facilities to allow proper administra-  
7 tion of justice, then the legislature in its wisdom in  
8 providing additional judges of course cannot do the full  
9 job and therefore it seems imperative that the state  
10 recognize as its full and complete financial responsi-  
11 bility the matter of the proper administration of justice  
12 in this state.

13 Also, I should say that the committee had before  
14 it several delegate proposals suggesting specialty  
15 courts, or courts other than those created in the four-tier  
16 system recommended by the committee.

17 We would like to assure you that we are not un-  
18 sympathetic with the need for specialty courts perhaps  
19 at some jurisdiction at the moment and perhaps to a greater  
20 extent in the foreseeable future. We feel, however, that  
21 the allowance for functional division should be entirely



1       adequate and sufficiently flexible within rule-making  
2       power of the Court of Appeals to provide the facility and  
3       the manpower necessary to accommodate the needs of any  
4       particular jurisdiction in the matter of a specialty  
5       court. Suggestions brought before the committee were for  
6       Tax Court, Court of Claims, Housing Court, Family Court,  
7       and specialty courts of such jurisdiction.

8               Obviously there is at the moment in some limited  
9       areas a need to accommodate the specialties in those  
10      areas. However, the mandate in the Constitution, provi-  
11      sion for those courts needed only in certain areas, per-  
12      haps only temporarily, would in the view of the majority  
13      be an unnecessary constitutional provision.

14             We are confident that the wide latitude allowed  
15      in the matter of creating functional divisions can accom-  
16      modate the need for such specialty courts.

17             In the matter of the District Courts, there  
18      was considerable discussion in our committee and testimony  
19      to support the need for a District Court in every county.  
20      Our committee was requested by several persuasive wit-  
21      nesses to make provision in the Constitution for a District



1 Court in every county. On the contrary, there was testi-  
2 mony equally as persuasive that in some areas of the  
3 state the apparent need did not exist for a District  
4 Court in every county. We have adopted the provisions of  
5 the present Constitution in this regard that there be a  
6 Superior Court judge in every county and that requirement  
7 continues.

8 Under the proposed recommendation, the legis-  
9 lature creates the districts in which the District Courts  
10 shall operate. We were encouraged to believe that the  
11 legislature in its wisdom will provide a District Court  
12 for every county where the legislature can be persuaded  
13 that the need exists.

14 On the contrary, in the areas where the need  
15 does not seem to require such a court in every county, we  
16 are confident that the legislature can group these coun-  
17 ties in a district that can serve a useful and efficient  
18 function in the administration of justice for those areas.

19 We do by way of digression remind you again, as  
20 I did before, that the Committee Recommendation does re-  
21 quire in effect a District Court facility in every county





1 because of the requirement that there be a District  
2 Court clerk in every county.

3 In other words, as the committee conceives it  
4 there will be the office of a District Court in every  
5 county with a clerk present at all times.

6 Therefore, within those recommendations, per-  
7 petuating as we propose the Court of Appeals as it is,  
8 and the Court of Special Appeals under its new name which  
9 we recommend be the intermediate Court of Appeals, and with  
10 the Superior Court with a judge in every county and Dis-  
11 trict Court to be arranged, and with the manpower provided  
12 by the legislature, we are confident that within this  
13 court structure and the jurisdiction to be prescribed by  
14 the legislature operating in functional divisions as the  
15 Court of Appeals may provide by rule that the State of  
16 Maryland will have in our humble view an improved and  
17 more efficient judicial system.

18 I would be glad to answer any questions I can.

19 THE CHAIRMAN: Are there any questions of the  
20 committee chairman for purposes of clarification of  
21 the committee recommendations with respect to court



1 structure, Section 5.01 to 5.11?

2 Delegate Chabot?

3 DELEGATE CHABOT: Delegate Mudd, in view of the  
4 stress which you and the committee report have put on  
5 the flexibility that is available by the use of separate  
6 parts or separate divisions in the Superior Court, could  
7 you explain or perhaps I missed it, could you explain  
8 again what the need is for having a separate fourth tier?  
9 It would seem that any functions of this fourth tier  
10 could also be handled by the flexible separate parts or  
11 divisions.

12 DELEGATE MUDD: We gave some consideration to that  
13 thought in connection with a three-tier rather than a  
14 four-tier structure, Delegate Chabot.

15 It was, as I think I mentioned before, prob-  
16 ably the compelling reason that with the maze of courts  
17 of limited jurisdiction we have too many, and with the  
18 limited manpower at the Superior or Circuit Court level,  
19 that to absorb into a fourth tier, namely the District  
20 level, all of the courts of limited jurisdiction now  
21 operating in the state, in many instances with



1 part-time nonlawyer judges, that the fourth tier was  
2 almost a must to accommodate the transfer of all of that  
3 judicial activity into a unified uniform integrated court  
4 system, with this further view: that the courts of limited  
5 jurisdiction in Maryland now have varying jurisdictions,  
6 several jurisdictions in some instances being no more than  
7 a hundred to \$300, in others \$3,000.

8 Hopefully the legislature would prescribe  
9 jurisdiction for the District Court probably at the top  
10 figure enjoyed by any Peoples' Court. To that extent it  
11 would relieve the case load and constantly increasing case  
12 load at the Superior or Circuit Court level.

13 Does that answer your question?

14 DELEGATE CHABOT: I must confess it does not  
15 really, because the same people that you would, it would  
16 seem, unless there is something in it I missed, that the  
17 same people whom you would call District Court judges  
18 would handle this complex case load, which is now handled  
19 by the varying courts of limited jurisdiction in the  
20 state, could just as well be separating off and handled  
21 far more flexibly as separate parts of the Circuit Court





1       which I suppose could be divided by amount of money in  
2       issue as well as by specialized type of case in issue  
3       into separate divisions.

4               DELEGATE MUDD: I think what you are recommending  
5       or suggesting is we did not adopt the so-called three-tier  
6       system. But the compelling reason for the fourth tier,  
7       as I have attempted to explain but apparently not too  
8       well is that it appeared to us to be too much to try to  
9       absorb in the existing third tier we have, the Circuit  
10      Court. It would probably require doubling judicial man-  
11      power at this level, tremendous increase in facilities  
12      and obviously the Orphans' Court has to come into one tier  
13      or the other. The juvenile work is expanding all the time.

14             It seems to us that four levels was a better  
15      structure than three tiers with the maze of functional  
16      divisions in the third tier.

17             THE CHAIRMAN: Delegate Della.

18             DELEGATE DELLA: Delegate Mudd, I refer you to  
19      Section 5.03.

20             The question is after a study of the number of  
21      judges, beginning prior to the Bond report, where we had





1 nine judges, which was then reduced to five, it is now  
2 seven. Did your committee take into consideration the  
3 explosive population we expect between now and 1980 where  
4 we might need more than seven judges?

5 THE CHAIRMAN: Delegate Mudd.

6 DELEGATE MUDD: Yes, Delegate Della, but we hope  
7 that can be absorbed in the Intermediate Court of Appeals,  
8 court of last resort, where we have fixed the limit of  
9 judges at seven, will really be a court of last resort  
10 and that the Intermediate Court of Appeals more than the  
11 Court of Appeals will absorb the increase in that case load.

12 THE CHAIRMAN: Delegate Della.

13 DELEGATE DELLA: It so happens now I am informed  
14 they are now overworked. If we could have what you have  
15 put in the intermediate court that the judges could be  
16 increased by law -- in other words, you can always in-  
17 crease the number instead of having to remain at seven  
18 judges.

19 THE CHAIRMAN: Delegate Mudd.

20 DELEGATE MUDD: Apparently I have not made  
21 myself clear. If the appellate work and additional



1 jurisdiction in appellate work is granted to the Inter-  
2 mediate Court of Appeals and that court can be expanded and  
3 number of judges increased, then that will relieve the  
4 Court of Appeals possibly of some of the work it is now  
5 doing.

6 THE CHAIRMAN: Delegate Raley.

7 DELEGATE RALEY: Mr. Chairman, Delegate Mudd,  
8 Chairman Mudd, the minority leader points out that in  
9 setting up of this judicial system that you do not provide  
10 that any other courts could be provided in the future by  
11 law.

12 I would like to have your thinking on why you  
13 left out the clause that they have suggested that any  
14 other courts that may be provided by law, why was that  
15 left out? We cannot always see in the future.

16 DELEGATE MUDD: I think their point, Delegate  
17 Raley, is we put in the word "exclusively" in Section  
18 5.01. Our recommendation advises the judicial power of  
19 the state in four tiers exclusively, which would necessitate  
20 constitutional amendment to provide other constitutional  
21 courts.



1           Of course our answer to that is functional  
2 divisions.

3           Also, we anticipate that the legislature in  
4 creating administrative agencies, such agencies more and  
5 more are absorbing some of the work that heretofore found  
6 its way into the courts. That also is a flexibility that  
7 is reserved to the legislature.

8           As a matter of fact there are courts, at least  
9 one court now existing that is not a court but is an  
10 administrative agency. Our emphasis was to mandate in  
11 the Constitution the four-tier system and vest the power  
12 in that four-tier system exclusively, which means that  
13 any other constitutional court can only be accomplished  
14 by amendment to the Constitution.

15           THE CHAIRMAN: Any other questions?

16           Delegate Singer.

17           DELEGATE SINGER: Mr. Chairman, in reference to  
18 Section 5.03, since the chief judge is going to be em-  
19 powered with a great deal of administrative duties, would  
20 it not serve flexibility greater if the seven judges  
21 named in the Constitution were provided as a minimum?





1 I understand your reference to the intermediate  
2 court relieving some burden on the Court of Appeals, but  
3 at some future date might it not be well to have this  
4 flexibility in the Constitution so that with the chief  
5 judge devoting a great deal of his time to administrative  
6 duties, it might be better to be able to increase the  
7 number of judges on the highest court?

8 DELEGATE MUDD: In our view, Delegate Singer,  
9 the flexibility there is increasing the jurisdiction and  
10 manpower of the Intermediate Appellate Court.

11 We have a four-tier system with two Appellate  
12 Courts and two Trial Courts. By fixing the number of  
13 judges of the highest court at seven, obviously that  
14 does limit the amount of work that court can handle, but  
15 by leaving the Intermediate Appellate Court flexible as to  
16 jurisdiction and as to manpower, we feel that can be the  
17 shock absorber, so to speak, to pick up the increase or,  
18 as the circumstances may require, to increase its juris-  
19 diction and thereby relieve the court of last resort.

20 Do I make it clear?

21 THE CHAIRMAN: Delegate Bushong.



1 DELEGATE BUSHONG: Delegate Mudd, do you contem-  
2 plate the District Court shall be a court of record?

3 DELEGATE MUDD: We have a memo on that, Delegate  
4 Bushong, from our very able staff man and that can be  
5 done by the legislature.

6 It is our thought that probably all four of these  
7 courts will probably be courts of record.

8 THE CHAIRMAN: Delegate Blair.

9 DELEGATE BLAIR: Delegate Mudd, do you have any  
10 statistics as to number of People's Courts and Municipal  
11 Courts that you have to compare in ratio to the number of  
12 District judges that may be necessary to compensate the  
13 manning of these courts?

14 DELEGATE MUDD: We obtained a wealth of infor-  
15 mation on that and I have forgotten how much of it is  
16 set forth in our memorandum. I do not believe it is.

17 I might say we had a subcommittee of the Com-  
18 mittee on the Judicial Branch headed by Delegate Bradshaw  
19 to try to evaluate the cost to the state of taking over  
20 and providing the manpower for the system we propose.

21



1                   In that connection we tried to get how  
2 many people were required, judges, but it varies in juris-  
3 diction depending upon the nature and culture of the area.  
4 Obviously an arterial highway through a small populated  
5 area can generate a lot of traffic tickets.

6                   THE CHAIRMAN: Delegate Blair.

7                   DELEGATE BLAIR: My question is directed  
8 mostly to the question of what the financial cost would be  
9 to man these district courts.

10                  THE CHAIRMAN: Delegate Mudd.

11                  DELEGATE MUDD: May I refer that to the chair-  
12 man of our subcommittee, Mr. Chairman, who may have the  
13 facts and figures with him?

14                  THE CHAIRMAN: Delegate Bradshaw, can you  
15 respond to the inquiry from Delegate Blair?

16                  DELEGATE BRADSHAW: Yes, Mr. Chairman. We  
17 sought out the assistance of the fiscal bureau, and Mr.  
18 O'Dell Smith of that bureau was assigned with  
19 Dr. Cooper to develop factual information which we might  
20 find useful.

21                  We have a vast amount of research material,



1 most of which has not been correlated or compiled into  
2 usable material here for debate on the floor.

3 But to answer your question quickly, it is Mr.  
4 Smith's conclusion that it would cost the State  
5 of Maryland, not the locality, because our system, of  
6 course, is going to be a statewide system, approximately  
7 \$250,000 more per year to inaugurate this fulltime  
8 statewide judicial system.

9 THE CHAIRMAN: Delegate Blair.

10 DELEGATE BLAIR: Delegate Mudd, one other  
11 question. Was any consideration given to having a court  
12 set aside solely for the purpose of traffic matters, as  
13 distinguished from the other matters that come before these  
14 lower courts?

15 DELEGATE MUDD: Not at our committee level,  
16 but we feel that the functional divisions which may be  
17 created by rule could, for instance, perpetuate in Balti-  
18 more City a functional division of a court of limited  
19 jurisdiction that dealt only with traffic matters, if  
20 that was the desire of a particular jurisdiction.

21 THE CHAIRMAN: Delegate Willoner.





1 DELEGATE WILLONER: I have a question on  
2 section 5.11 on page 4, where you set forth jurisdiction  
3 of commissioners. You state: "Commissioners may exercise  
4 powers only with respect to warrants of arrest, collateral  
5 and incarceration pending hearing, and then only as pre-  
6 scribed by rule."

7 Do you mean to include in that release on terms  
8 other than bail?

9 DELEGATE MUDD: The complete section is prescribed  
10 by rule, but it would be my personal guess the rule would  
11 be liberal in that respect.

12 THE CHAIRMAN: Delegate Willoner.

13 DELEGATE WILLONER: Except, "only as prescribed  
14 by rule" unfortunately refers only to "warrants of arrest,  
15 collateral and incarceration pending hearing..."

16 I would assume this jurisdiction cannot be  
17 expanded by rule.

18 DELEGATE MUDD: Our interpretation of that is  
19 the rules could only provide for the commissioners to exer-  
20 cise authority in those limited matters: warrants of  
21 arrest, collateral, and incarceration pending hearing.



1 THE CHAIRMAN: The chair isn't clear as  
2 to your question. If I understand what you say, would not  
3 the phrase in line 3, "incarceration pending hearing,"  
4 cover the subject matter of your question?

5 DELEGATE WILLONER: That was my next question.  
6 I don't know what "incarceration pending hearing" means.  
7 Does that mean they can release without incarceration, or  
8 they can only incarcerate pending hearing?

9 DELEGATE MUDD: I think under "as prescribed by  
10 rule" it can be both, in my opinion. On incarceration  
11 in absence of bail, or whatever rule, the Court of Appeals  
12 will make the rule.

13 THE CHAIRMAN: Delegate Willoner.

14 DELEGATE WILLONER: You mean to foreclose the  
15 legislature providing any other jurisdiction than what  
16 is allegedly spelled out in that paragraph for the commis-  
17 sioners to exercise?

18 DELEGATE MUDD: Yes.

19 THE CHAIRMAN: Delegate Willoner.

20 DELEGATE WILLONER: I have another question.  
21 You indicated in the event the counties would



1 not provide facilities for the courts that the State would  
2 provide for those facilities.

3 Did I understand you correctly?

4 DELEGATE MUDD: I indicated more that it would  
5 be the obligation of the State if this is adopted to  
6 forthwith provide facilities.

7 THE CHAIRMAN: Delegate Willoner.

8 DELEGATE WILLONER: At the present time we have  
9 county courthouses as property of the county. Is it  
10 contemplated the State will rent these facilities?

11 DELEGATE MUDD: Precisely, and Delegate Bradshaw,  
12 in assembling the information he did for the subcommittee  
13 I believe in many instances has already the square footage  
14 of county buildings now occupied by court facilities.

15 THE CHAIRMAN: Delegate Willoner.

16 DELEGATE WILLONER: It also contemplated that  
17 the State will then in those areas which do not have  
18 courthouses build courthouses?

19 DELEGATE MUDD: I think it must follow. I know  
20 one jurisdiction that is very anxious for it to do so.

21 THE CHAIRMAN: Delegate Beatrice Miller.





1 DELEGATE B. MILLER: Chairman Mudd, as I under-  
2 stand it, under functional division of courts it would be  
3 possible to set up a family court or juvenile court or some  
4 such court, would it not?

5 DELEGATE MUDD: Yes.

6 DELEGATE B. MILLER: Would it be also possible  
7 to have specialist judges who would be assigned solely  
8 to those courts on the basis of their knowledge in that  
9 area?

10 DELEGATE MUDD: Within the rule-making power,  
11 the Court of Appeals, under its rule making power has the  
12 right to assign judges, and it is entirely possible that a  
13 judge who was particularly knowledgeable in one field and  
14 preferred that field but now handles many areas may become  
15 permanently or for an unlimited time a juvenile judge or  
16 traffic court judge. That already happens in some juris-  
17 dictions at the present time.

18 THE CHAIRMAN: Delegate Miller.

19 DELEGATE B. MILLER: Would there be any  
20 recourse if such event were not to happen, if a judge were  
21 assigned to a family court, for instance, who did not have



1 the specialized interest that he should have in that court,  
2 would there be any recourse in that case?

3 THE CHAIRMAN: What do you mean by "recourse"?

4 DELEGATE B. MILLER: We are faced here with  
5 the alternative of having courts prescribed by law or  
6 prescribed by rule. I would assume if they were prescribed  
7 by law the ordinary citizen could then go about whatever  
8 method is necessary to make known his wishes in that area.

9 How would he do this if the courts are prescribed  
10 by rule?

11 THE CHAIRMAN: Delegate Mudd.

12 DELEGATE MUDD: You mean to have the court pro-  
13 vided or to --

14 THE CHAIRMAN: I take it the question is by what  
15 means could a private citizen make known to the court  
16 exercising rule making power the need or the desire  
17 for a specialist judge in a particular place? Is that  
18 your question?

19 DELEGATE B. MILLER: Yes.

20 DELEGATE MUDD: To appeal to a very competent  
21 standing committee on rules composed of 16 talented judges



1 and lawyers.

2 THE CHAIRMAN: Delegate Bennett.

3 DELEGATE BENNETT: I note, Chairman Mudd,  
4 with great satisfaction your answer to this last question,  
5 and I am glad to see the committee favors, I take it, the  
6 establishment of family courts in those areas where  
7 needed. But merely designating a judge is not enough,  
8 because the family court, to fulfill its responsibilities  
9 must be equipped --

10 THE CHAIRMAN: Delegate Bennett, are you going  
11 to ask a question?

12 DELEGATE BENNETT: Yes, sir. -- must be  
13 equipped with adequate probation services. How will that  
14 be achieved under this proposal?

15 DELEGATE MUDD: Delegate Bennett, this is one  
16 very important feature in the court budget. And administra-  
17 tive judges and the need for another probation officer or  
18 psychiatrist or some such additional manpower in a parti-  
19 cular area for family court or juvenile court would be  
20 something that would be provided for in the judicial budget;  
21 and that should be channeled through, the request for that



1 should be channeled through the administrative judge.

2 THE CHAIRMAN: Delegate Bennett.

3 DELEGATE BENNETT: Would you also contemplate  
4 that probation service now being administered separately  
5 from the court system would likewise be transferred  
6 to the court system and taken over and financed and funded  
7 under the court system?

8 DELEGATE MUDD: Probation, did you say?

9 DELEGATE BENNETT: Yes, probation service.

10 DELEGATE MUDD: Yes. I can see that becoming  
11 an arm of the court in its administrative responsibility,  
12 yes.

13 THE CHAIRMAN: Delegate Bennett.

14 DELEGATE BENNETT: I hope that will be given  
15 consideration at the time this article is discussed, be-  
16 cause it is a pretty important issue, it is policy --

17 THE CHAIRMAN: Is this a question?

18 DELEGATE BENNETT: This is an expression of  
19 hope, sir.

20 THE CHAIRMAN: You may express that later, sir.  
21 Delegate Scanlan.





1           DELEGATE SCANLAN: I have a question with re-  
2 spect to section 5.11, dealing with the Commission.  
3 The committee apparently has followed the recommendation  
4 of the Constitutional Convention in this area and deliberately  
5 restricted powers of the Commissioners to those set forth  
6 in the section; is that not correct, Mr. Chairman?

7           DELEGATE MUDD: Yes, sir.

8           DELEGATE SCANLAN: Was any thought given to  
9 providing some flexibility by permitting additional powers  
10 that could be prescribed by rule in the future? There  
11 may come a day when Commissioners, for example, will be  
12 thought competent enough to determine whether sufficient  
13 evidence exists to hold a man or to pass upon sufficiency  
14 of search warrants. Under this language that power  
15 could not be vested unless by amendment to the Constitution,  
16 is that correct?

17          DELEGATE MUDD: Correct.

18          THE CHAIRMAN: Delegate Rybczynski.

19          DELEGATE RYBCZYNSKI: Mr. Chairman, isn't it  
20 true that on your committee you have a businessman from  
21 the Dundalk District of Baltimore County named William  
Rush? Isn't it true he recently celebrated his 48



1 birthday; and isn't it true that he is a pleasant, intelli-  
2 gent, articulate -- what else -- aren't all these things  
3 true about him , and shouldn't we give him a round of  
4 applause?

5 DELEGATE MUDD: Exactly; except I didn't think  
6 he was 48. (Laughter.) (Applause.)

7 THE CHAIRMAN: Delegate Rybczynski.

8 DELEGATE RYBCZYNSKI: I would like to ask  
9 another question.

10 DELEGATE MUDD: Don't make it that long.

11 DELEGATE RYBCZYNSKI: Delegate Mudd, with reference  
12 to the uniformity of the four tier system, plus the inclu-  
13 sion of the commissioners, who, I suppose in many respects  
14 would be like the masters we now use, can you give us an  
15 estimate of the anticipated cost, say within the first  
16 five years of operation of this new four-tier system?

17 DELEGATE MUDD: The only answer I can give  
18 to him is the one Delegate Bradshaw gave a few moments  
19 ago, that the information he has now so far assembled  
20 shows it would cost approximately \$250,000 more per year  
21 than the present cost to administer the court system.



1 May I yield to him for further answer?

2 THE CHAIRMAN: Delegate Bradshaw, can you  
3 respond further to the question?

4 DELEGATE BRADSHAW: Yes, Mr. Chairman.

5 In further response to the question, the figures  
6 we have developed from Dr. Cooper's office show that so far  
7 as the localities are concerned there will be shifted  
8 from the taxpayers, local taxpayers, to the State taxpayers  
9 each year to support the judicial system, including the  
10 cost of compensating the localities for existing court-  
11 houses and other court-related physical facilities,  
12 \$11,063,267 a year. That doesn't mean it is  
13 costing that much more. It simply means that figure is  
14 being shifted from localities to the State government.

15 By way of further clarification of what was  
16 said before, that figure, in addition to that figure  
17 is the figure of \$250,000 which Dr. Cooper estimated will be  
18 the additional expense involved in upgrading our judicial  
19 system and in putting it on a fulltime basis throughout  
20 the State at all levels.

21 THE CHAIRMAN: Delegate Rybczynski.





1 DELEGATE RYBCZYNSKI: May I ask Delegate Bradshaw  
2 another question?

3 DELEGATE BRADSHAW: Yes, sir.

4 DELEGATE RYBCZYNSKI: Does this include the full  
5 time salaries, comparable to those in Baltimore City, for  
6 instance, at \$21,500 for district judges? Does it include  
7 those kinds of salaries? Does it include the pension system?  
8 Does it include hiring of bailiffs, which part-time judges  
9 do not now have? Does it include all those kinds of  
10 things?

11 THE CHAIRMAN: Delegate Bradshaw.

12 DELEGATE BRADSHAW: Yes, it does include all  
13 those items that you have mentioned; but, because, as Dr.  
14 Cooper says in his letter of transmittal of that data, it is  
15 difficult and was impossible within the limitations of time  
16 imposed on him to get these figures on an absolutely  
17 accurate basis. What he did was take Baltimore City,  
18 the cost of operating the judicial system for the city and  
19 the four major urban counties which comprise 80 percent  
20 of the judicial business of the State and 80 percent of the  
21 population, and he used that as a norm and projected these



1 figures for the remaining 20 percent of the population,  
2 and took into account certain other factors, such as  
3 distance involved in, say, Garrett County, and in some  
4 areas of the Eastern Shore where he made some allowance for  
5 perhaps additional judges so as to eliminate travel time or  
6 some of the travel time otherwise which would be involved.

7 THE CHAIRMAN: Delegate Rybczynski.

8 DELEGATE RYBCZYNSKI: Delegate Bradshaw, so you  
9 could help our thinking and arguments as it develops over  
10 the next couple days, could you tell us now the approximate  
11 salary of a part-time magistrate in the various counties?  
12 Don't go down all 23, but an average.

13 THE CHAIRMAN: You mean the present salary?

14 DELEGATE RYBCZYNSKI: Yes, sir.

15 THE CHAIRMAN: Delegate Bradshaw.

16 DELEGATE BRADSHAW: I don't have that. We  
17 have had testimony before our committee which shows that  
18 it ranges all the way from \$300 a year to \$2700 or \$2800  
19 a year.

20 THE CHAIRMAN: The Chair would like to observe  
21 that information was furnished in considerable detail in



1 a report of the Bar Association Committee which I think was  
2 made available to every delegate as of about two years  
3 ago. If you do not have it, it would be available in the  
4 Convention library.

5 Delegate Rybczynski.

6 DELEGATE RYBCZYNSKI: If I may, Chairman Mudd,  
7 you, on about five or six or seven occasions during  
8 your address used the word "chaotic." You referred to  
9 one magistrate. Are you suggesting this is a prevalent  
10 situation throughout the State of Maryland, that the word  
11 "chaotic" applies throughout the State?

12 DELEGATE MUDD: I adopted the word from witnesses  
13 before our committee. I have no personal knowledge of the  
14 situation in Baltimore City. That is one I happened to see  
15 in the paper.

16 There was testimony before our committee of  
17 justice being administered in the backend of a barbershop  
18 in courts of limited jurisdiction.

19 Another witness I believe testified that a  
20 very competent judge who was also a carpenter or cabinet  
21 maker, the only thing necessary to transform his shop





1 into a court room was to sweep up the shavings, and then  
2 court was in session.

3 Some of the testimony of that nature I think  
4 prompted the continued use in our committee of "chaotic,"  
5 which I have used here to be factual.

6 THE CHAIRMAN: Delegate Rybczynski.

7 DELEGATE RYBCZYNSKI: The word "chaotic" would  
8 apply to the facilities, rather than to the actual adminis-  
9 tration, I think it is fair to say.

10 DELEGATE MUDD: Yes.

11 DELEGATE RYBCZYNSKI: You alluded to, or you  
12 just touched on the Montgomery County situation as to  
13 the orphans court. Would you tell this committee the  
14 information that your committee learned on this transfor-  
15 mation; that is, from the Orphans Court of Montgomery  
16 County to the supervision and administration of these matters  
17 by the Circuit Court of Montgomery County? Did that work  
18 well, or did it not work well?

19 DELEGATE MUDD: I would say preliminarily that  
20 if the testimony before our committee could be counted in  
21 pages, probably somewhere between a third and a half of





1 the pages would deal with Montgomery County. But the  
2 conclusion of our committee was that the problem in Mont-  
3 gomery County, if there is one, regarding Orphans Court  
4 jurisdiction being taken over by the Superior Court, was  
5 not in the system, but in the administration.

6 THE CHAIRMAN: Delegate Rybczynski.

7 DELEGATE RYBCZYNSKI: I have a very pointed  
8 question.

9 If we accept the fact that functional division  
10 would be a good thing for the district court, why is not  
11 functional division also applicable to the superior court?

12 DELEGATE MUDD: It is so provided for in  
13 section 5.08.

14 DELEGATE RYBCZYNSKI: Sorry; right.

15 THE CHAIRMAN: Delegate Clagett.

16 DELEGATE MUDD: I am glad I got one easy  
17 question.

18 DELEGATE CLAGETT: Delegate Mudd, with respect  
19 to section 5.11, I note that the principal difference between  
20 the majority and minority is that the commissioners would be  
21 appointed by the court, rather than as provided by law.

DELEGATE MUDD: Yes.



1  
2 DELEGATE CLAGETT: The objection provided  
3 by law of the minority seemed to have some merit in that  
4 it would relieve the district judge of the responsibility  
5 of interviewing, selecting and granting special  
6 appointments to the successful applicant as a Commissioner.

7 DELEGATE MUDD: The first observation you made  
8 was persuasive. Our committee was anxious to relieve  
9 the district judge of any appointive responsibility.  
10 But on the other hand as I recollect the testimony and dis-  
11 cussion in committee it was our considered opinion after  
12 careful deliberation that the work of these commissioners  
13 was the function of the judiciary and to some extent or  
14 to a great extent the responsibility for administration  
15 of the court system carried through to these commissioners,  
16 and that it was just impractical in the final analysis for  
17 a district court judge to have to try to properly administer  
18 justice in his district if he had no control over the  
19 Commissioners.

20 By experience there was a wealth of testimony  
21 before our committee that some present committing  
magistrates are not capable of performing the functions



1 capable of performing the functions required of  
2 commissioners.

3 THE CHAIRMAN: Delegate Clagett, do you have a  
4 further question?

5 Delegate Clagett, do you have a further question?

6 DELEGATE CLAGETT: I would presume, if I am  
7 not correct, will you please correct me, that the  
8 committing magistrates and justices of the peace, as presently  
9 designated, would automatically shift over and become  
10 commissioners or at least to a large extent or percentage.  
Is that not true?

11 DELEGATE MUDD: Under our proposal, of course,  
12 they would continue on under the transfer provisions  
13 until this four-tier proposal if adopted is operable.  
14 But the appointment would be up to the district judge.  
15 I would guess in many instances as I assume would happen  
16 to clerks of courts and registers of wills, those who  
are capable and competent would be appointed.

17 THE CHAIRMAN: Delegate Clagett.

18 DELEGATE CLAGETT: My last question also  
19 is with respect to Section 511 and has to do with why  
20 you were reluctant to extend the jurisdiction of  
21





1 the commissioners and specifically spelled out their  
2 function and responsibility in the constitutional language  
3 of your sections.

4 DELEGATE MUDD: The compelling reason there  
5 as I recall was to limit the functions of these non-  
6 lawyer officers of the court within the areas as restricted  
7 and thereby improved administration of justice.

8 To bring up the matter of search warrants, we  
9 thought that should be handled at judge level rather than  
10 lay level.

11 THE CHAIRMAN: Delegate Clagett.

12 DELEGATE CLAGETT: As a practical matter, does  
13 that not mean that the district judge is going to be  
14 routed out of bed at midnight in order to have a search  
15 warrant issued to make a raid upon a still in some section  
16 of the lower portion of the Southern Maryland counties?  
17 (Laughter)

18 DELEGATE MUDD: I assume you are speaking of the  
19 lower portion of Prince Georges, but it is possible.  
20 (Laughter)

21 THE CHAIRMAN: Delegate Weidemeyer, did you  
have a question?

DELEGATE WEIDEMEYER. No, sir.

THE CHAIRMAN: Delegate Mitchell.



1  
2  
3 DELEGATE MITCHELL: Mr. President and Chairman  
4 Mudd, I am concerned about the concentration of too much  
5 power in the judiciary. I think this is a democratic  
6 form of government and of course there should be checks  
7 and balances in each division of the government as well.

8 I think that while it is a laudable aim to  
9 eliminate political influence from the judiciary, a number  
10 of efforts have been tried and I have not seen too much  
11 elimination of political influence from the judiciary.

12 THE CHAIRMAN: Delegate Mitchell, do you  
13 have a question?

14 DELEGATE MITCHELL: Yes, sir, I preface it  
15 with that. Therefore, I am concerned about the concentration  
16 of so much power, appointing power, in the judiciary  
17 because I think that that opens the door to more political  
18 activity by the judiciary.

19 For example, it seems to me to improve --

20 THE CHAIRMAN: Delegate Mitchell, don't you  
21 think you could state your question now?

22 DELEGATE MITCHELL: Yes, sir. Wouldn't it be  
23 better to have the Commissioners qualified by the  
24 state civil service system and appointed on merit rather



1  
2 than having them appointed by the judges?

3 Then I would like to ask why did you eliminate  
4 in Section 5.30, why do you make an exception --

5 THE CHAIRMAN: Section 5.30 is not open to  
6 question at this time. Questions are limited to 5.02 to  
7 5.11.

8 DELEGATE MITCHELL: Sorry.

9 THE CHAIRMAN: Can you answer the first question,  
10 Delegate Mudd?

11 DELEGATE MUDD: I think your point is well  
12 taken, Delegate Mitchell, but it was the considered  
13 view of a majority of the committee that if we mandate  
14 in the Constitution administrative responsibility of  
15 this system to the judges, then we must give them the  
16 appointive power to provide those commissioners who in the  
17 judgment, in the opinion of the judge would be best  
18 equipped to perform an administrative function for the  
19 courts.

20 There is a lot to be said for checks and balances  
21 but there is not very much practicality about giving  
me a job to do and then say you can only do it with someone





1  
2 appointed by the legislature. That was the thinking  
3 of the committee.

4 THE CHAIRMAN: Delegate Mitchell.

5 DELEGATE MITCHELL: But, sir, on the other hand,  
6 if they come through the merit system, I believe all  
7 would be qualified. Then we have the lessening of the  
8 possibility of entrenched political activity in the  
9 judiciary.

10 THE CHAIRMAN: What is your question?

11 DELEGATE MITCHELL: Wouldn't you think so?

12 (Laughter)

13 DELEGATE MUDD: No, I do not think so, because  
14 the rule would not foreclose that possibility.

15 THE CHAIRMAN: Delegate Bamberger.

16 DELEGATE BAMBERGER: Delegate Mudd, Section  
17 5.02 fixes both the appellate and original jurisdiction  
18 of the court of appeals or fixes the appellate jurisdic-  
19 tion by law, the original jurisdiction by constitution.  
20 Section 5.05 says that both the appellate and original  
21 jurisdiction of intermediate appellate court can be  
fixed by law.





1           My question is why you prohibited the possibility  
2 of the legislature conferring original jurisdiction  
3 on the court of appeals but gave that power to the  
4 legislature with respect to the intermediate court.

5           It suggests to me when an occasion arises  
6 where the legislature did want to create original juris-  
7 diction in an appellate court, that you have really  
8 restricted them to fixing that in the intermediate appellate  
9 court because obviously that is much easier to do than  
10 amending the constitution and fixing it in the court of  
11 appeals, kind of prejudged or at least reduced their  
option.

12           THE CHAIRMAN: Delegate Mudd?

13           DELEGATE MUDD: We recognize we have, Delegate  
14 Bamberger, and after hearing from several judges of the  
15 court of appeals and intermediate court of appeals  
16 and debating the matter within committee, our objective  
17 was to maintain and perpetuate our court of appeals  
18 as the court of last resort and with that appellate  
19 jurisdiction responsibility not to be interfered with by  
20 delegation of original jurisdiction by the legislature,  
21 and with the intermediate court of appeals absorbing



1 the workload if it should develop. That was the considered  
2 view of the majority.

3 THE CHAIRMAN: Delegate Bamberger.

4 DELEGATE BAMBERGER: Would it be possible for  
5 the legislature to create original jurisdiction in the  
6 intermediate appellate court and at the same time preclude  
7 review of that by the court of appeals.

8 DELEGATE MUDD: Yes.  
9  
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21



1           DELEGATE BAMBERGER: Section 5.06 provides  
2     that the General Assembly may increase the number of  
3     members of the intermediate appellate court over the  
4     minimum of five. But the legislature when it does that  
5     may not at the same time by law provide that they would  
6     sit in divisions. That is an exclusive rule-making function.  
7     Why would you not allow the General Assembly to provide by  
8     law that the court could sit in divisions

9           DELEGATE MUDD: As I recall the consideration  
10    in committee was that the use of the intermediate court  
11    of appeals in division work could be better accommodated  
12    by rule-making power than by the legislature. It is  
13    conceived and our committee assumed this court is going to  
14    be expanded jurisdictionally and with manpower. But once  
15    it is, and the rules do provide that this court sit in  
16    divisions that is more appropriately a rule-making power  
17    than to be prescribed by law.

18           THE CHAIRMAN: Delegate Bamberger.

19           DELEGATE MUDD: It is use of manpower actually.

20           DELEGATE BAMBERGER: In other words, if the  
21    legislature decided that the work of that court required  
   that its membership be increased they could increase





1 it to nine, let's say, as a number, but they would have  
2 to rely upon some assurance from the Court of Appeals that  
3 it would divide them into panels of three.

4 DELEGATE MUDD: Exactly, but all the  
5 testimony before our committee, Delegate Bamberger, has  
6 been to the effect that there has been complete harmony  
7 between the court in its exercise of its rule-making  
8 power and the legislative leaders in the exercise of the  
9 legislative functions regulating courts and we thought  
10 that compatibility could continue within this field.

11 THE CHAIRMAN: Delegate Bamberger.

12 DELEGATE BAMBERGER: Except that power is now  
13 really a concurrent power which is a great lever toward  
14 compatibility. Did you consider giving both the Court of  
15 Appeals and the General Assembly the power to have the  
16 intermediate court sit in divisions.

17 DELEGATE MUDD: I don't think that concurrent  
18 power to the General Assembly and by rule-making as  
19 applied to the intermediate court sitting in divisions  
20 was discussed, no.

21 THE CHAIRMAN: Delegate Bamberger.



1 DELEGATE BAMBERGER: Sections 5.08 and 5.10, I  
2 take it 5.08, Superior Court, there must be a Superior  
3 Court judge resident in each county, the District Court  
4 judge where the district encompasses more than one  
5 county, there must be a district court judge not just  
6 resident, not even necessarily resident, but who sits in  
7 that district. Why did you not -- does 5.08 require that  
8 there be a Superior Court sitting, functioning as court  
9 in each county.

10 DELEGATE MUDD: Yes, that is our interpretation  
11 of it.

12 THE CHAIRMAN: Delegate Bamberger, any further  
13 questions?

14 DELEGATE BAMBERGER: Yes. Isn't there then  
15 some problem of construction presented by comparison of  
16 Section 5.08 and 5.10? Because 5.10, while on Lines 35, it  
17 speaks about residence of the judge, it is much more  
18 specific in Lines 38 and 39, when it says "shall  
19 sit regularly."

20 DELEGATE MUDD: That language was designed to  
21 accommodate a situation where there is a district judge



1 for more than one county, where the district created by  
2 the legislature encompasses more than one county.

3 THE CHAIRMAN: Delegate Bamberger.

4 DELEGATE BAMBERGER: But it is the intention of  
5 Section 5.08 that there shall be a Superior Court in  
6 each county?

7 DELEGATE MUDD: Yes, but not in 5.10.

8 THE CHAIRMAN: Delegate Bamberger.

9 DELEGATE BAMBERBER: One last question. The  
10 last sentence of Section 5.10. Why did you not allow the  
11 General Assembly the power to prescribe functional  
12 divisions of the district court?

13 DELEGATE MUDD: We think it is more peculiarly  
14 a matter within the knowledge and experience of the  
15 court in its rule-making power.

16 THE CHAIRMAN: Delegate Singer.

17 DELEGATE SINGER: Mr. Chairman, I take it that  
18 the committee did not consider that the maintenance  
19 of the jails throughout the state would be one of those  
20 functions taken over by the state related to the judicial  
21 process.



1 THE CHAIRMAN: Delegate Mudd.

2 DELEGATE MUDD: Is your question did we assume  
3 they would?

4 DELEGATE SINGER: Yes.

5 DELEGATE MUDD: No.

6 DELEGATE SINGER: Jails to be taken over.

7 DELEGATE MUDD: No.

8 THE CHAIRMAN: Delegate Willoner.

9 DELEGATE WILLONER: Mr. Chairman, I wonder if  
10 the first provision of this Section 5.01, judicial powers  
11 of state vested exclusively in unified judicial system.

12 Do you mean by that, I know you tried to  
13 distinguish it but I had a great deal of difficulty  
14 understanding your reasoning, that you are talking about  
15 separation of powers or are you talking about the fact that  
16 the judicial powers to be executed only by the four courts  
17 rather than as a separation of powers that you are trying  
18 to get at separation of powers in that language.

19 DELEGATE MUDD: Sorry if I wasn't clear.  
20 Basically as the committee conceives it, this mandate in  
21 the Constitution and subject to change only by constitutional





1 amendment two appellate courts, two trial courts,  
2 four tier system. Anything over and above that would  
3 have to be the functional divisions created by rule of  
4 the court.

5 THE CHAIRMAN: Delegate Willoner.

6 DELEGATE WILLONER: In some of the testimony  
7 we received on separation of powers it was indicated  
8 when the Commission used the language you apparently adopted,  
9 the same language used by the Commission, intent was to  
10 no longer need separation of powers clause in the  
11 present Declaration of Rights in that in the other sections  
12 executive power was vested with the Governor, legislative  
13 power was vested with the legislature made up of the  
14 two houses. In your use of this, the Commission makes  
15 the same comment you do in your report, that this is not to  
16 prevent a quasi-judicial function handled by administrative  
17 agencies but I have a great deal of difficulty finding how  
18 you could use the word exclusively and not prevent the  
19 quasi-judicial functions being handled by administrative  
20 agencies. I wonder if you could explain that?

21



1 DELEGATE MUDD: They will not exercise judicial  
2 power.

3 THE CHAIRMAN: Delegate L. Taylor.

4 DELEGATE LLOYD TAYLOR: Mr. Chairman, in Section  
5 5.10, Line 30, it is stated the state shall be divided by  
6 law into districts. Each district shall be composed of  
7 one or more entire and adjoining counties. If Montgomery  
8 County was allocated, say, a district court, would  
9 Montgomery County in any way suffer from the fact that due  
10 to the population they would require more judges, more  
11 staff, and other facilities? Will larger counties suffer  
12 under this provision?

13 DELEGATE MUDD: I think the answer to your  
14 question, Delegate Taylor, is that Section 5.10, composition  
15 of district courts, contemplates the need for more than  
16 one district judge in some districts. I would  
17 guess Montgomery County would be one.

18 THE CHAIRMAN: Delegate Taylor.

19 DELEGATE LLOYD TAYLOR: Would the districts be  
20 based on population, division of the districts be based  
21 upon population?



1           DELEGATE MUDD: It is entirely within the  
2 wisdom of the legislature.

3           THE CHAIRMAN: Before recognizing any of the  
4 other delegates, I wonder if Delegate Mudd I could have  
5 you revert to the question asked by Delegate Willoner  
6 and ask you if you would not elaborate on it or if you  
7 would say whether the following statement by the  
8 Chair would be a proper elaboration.

9           DELEGATE MUDD: What section?

10          THE CHAIRMAN: Dealing with 5.01. That is that  
11 the same reasons which were assigned by the courts in  
12 holding that quasi-judicial agencies were not exercising  
13 a judicial function under the separation of powers  
14 doctrine would be the reasons behind your answer that the  
15 quasi-judicial agency would not be exercising judicial  
16 function in contravention of Section 5.01.

17          DELEGATE MUDD: Thank you for helping me, sir.  
18 Exactly.

19          THE CHAIRMAN: Delegate Chabot.

20          DELEGATE CHABOT: I would like to continue  
21 along that line. Does that mean then it would be within





1 the competence of the General Assembly to determine that,  
2 say, auto injury cases should be taken out of the  
3 judicial system and be handled by a newly created agency  
4 which would determine the respective rights of the parties  
5 in those cases.

6 DELEGATE MUDD: You mean tort cases or  
7 traffic violations?

8 THE CHAIRMAN: Delegate Chabot.

9 DELEGATE CHABOT: Either.

10 DELEGATE MUDD: I think it is possible for the  
11 legislature to provide for an agency to deal with the  
12 revocation and suspension of licenses for motorvehicle  
13 violations if that is responsive to your question.

14 THE CHAIRMAN: Delegate Chabot.

15 DELEGATE CHABOT: That only responds to part of  
16 the question. Could they also say that we are disturbed  
17 at the tremendous amount of time, use of jury trials, and  
18 so on with regard to auto injury cases and take the auto  
19 injury cases out and give them to a specialized agency.

20 DELEGATE MUDD: No, because that, I think, that  
21 has been accomplished or has been discussed in some



1 jurisdictions so I am told through a master branch of the  
2 trial court, for instance. If there is delegated to a  
3 master or some agency of court the matter of determining  
4 the monetary loss or damages but not the exercise of  
5 the judicial power in the matter.

6 THE CHAIRMAN: Delegate Chabot, do you have a  
7 further question?

8 DELEGATE CHABOT: Yes, still along this  
9 line. The United States Constitution has similar language  
10 except for the use of the word exclusively. I am not  
11 sure that creates a difference here. And yet has created  
12 a number of non-Article 3 courts or agencies which handle  
13 cases exactly like the cases handled in the regular court  
14 system.

15 Would you say that the use of the word  
16 exclusively would make that impossible here? I refer to  
17 the customs and patent court, United States Tax Court  
18 and for quite a while the Court of Claims was held to be a  
19 non-Article 3 court.

20 DELEGATE MUDD: I can't answer your question  
21 in relation to the Federal set-up but some of those



1 functions you mentioned are, I believe, non-judicial.

2 THE CHAIRMAN: Any further question, Delegate  
3 Chabot?

4 DELEGATE CHABOT: Yes. Let me go to a different  
5 topic. Did you indicate that Commissioners could be non-  
6 lawyers?

7 DELEGATE MUDD: Yes.

8 DELEGATE CHABOT: Did the committee feel it was  
9 wise even within the limitations of the rule-making power  
10 to permit non-lawyers to make determinations as to arrest  
11 warrants in view of the constitutional problems?

12 DELEGATE MUDD: Yes, but that will, I am sure,  
13 require someone with knowledge and instructions.

14 THE CHAIRMAN: Any further questions, Delegate  
15 Chabot?

16 DELEGATE CHABOT: Yes, sir. With regard to the use  
17 of the word resident in Sections 5.08 and 5.10, we have met  
18 the word in the Legislative Article and we will meet it  
19 in the Suffrage and Elections Article. Is this to be  
20 necessarily the same concept we find in those articles or  
21 may this be a different concept.



1 DELEGATE MUDD: Our Committee considered the  
2 use of this word "resident," and also "domicile" and  
3 "citizen," and we adopted the word "resident" as being  
4 the most descriptive of what we intended.

5 THE CHAIRMAN: Delegate Chabot.

6 DELEGATE CHABOT: But then this may be something  
7 that is different from a resident for purposes of the  
8 legislative article, suffrage and elections? I still don't  
9 understand. Am I to use the same concept?

10 THE CHAIRMAN: Delegate Chabot, may the Chair  
11 point out in the suffrage and elections article there is  
12 provision that the legislature may define residents for  
13 the purposes of that article?

14 DELEGATE CHABOT: Yes, I recognize that, and  
15 I was wondering whether that was intended to be, whether  
16 the intent of the committee was to import whatever that  
17 definition may be into this article, or in effect permit  
18 a different definition of the same word in this article?

19 THE CHAIRMAN: Delegate Mudd, do you understand  
20 the question?

21 DELEGATE MUDD: I think I understand the





1 question, but I don't see how I can answer what judicial  
2 or legislative interpretation or definition may be given  
3 to the word "resident."

4 THE CHAIRMAN: Delegate Bennett.

5 DELEGATE BENNETT: Mr. Chairman, did you give  
6 consideration to the establishment of an administrative  
7 office to serve the courts?

8 DELEGATE MUDD: I believe it was the view of  
9 our committee that such would be necessary, incident to  
10 the administrative responsibilities that must be taken  
11 over here, yes.

12 THE CHAIRMAN: Delegate Bennett.

13 DELEGATE BENNETT: Is it your notion that  
14 this would be done by rule?

15 DELEGATE MUDD: Yes.

16 DELEGATE BENNETT: Or would this require action  
17 of the General Assembly?

18 DELEGATE MUDD: By rule.

19 THE CHAIRMAN: Present administrative office  
20 is by statute, you understand, Delegate Bennett?

21 DELEGATE BENNETT: I was wondering whether



1 there was anything that would preclude the General Assembly  
2 from establishing such an office and giving it certain  
3 responsibilities.

4 DELEGATE MUDD: Under this proposal I would  
5 say that would be within the power of the Courts, under  
6 its rule making power, and we did consider the  
7 possibility of administrative agency, possibly an admini-  
8 strative judge; but I think it is the, I understand it  
9 to be the contemplation of this article that it would  
10 be accomplished by rule making.

11 THE CHAIRMAN: Delegate Bennett.

12 DELEGATE BENNETT: Isn't it true that there is  
13 going to be a tremendous amount of administrative work,  
14 particularly during this period of reorganization?

15 DELEGATE MUDD: Yes.

16 DELEGATE BENNETT: Don't you think something  
17 should be included in here specifically authorizing the  
18 establishment of that office and authorizing the courts  
19 to delegate to it certain powers?

20 DELEGATE MUDD: I think it would be more appro-  
21 priately a transitory provision.



1 THE CHAIRMAN: Delegate Adkins.

2 DELEGATE ADKINS: I wonder if the Chairman  
3 would try to define for me what he means by the term "func-  
4 tional division". Does it mean the division of the superior  
5 court may be established to function in any county, or does  
6 it have some more limited meaning in the sense that a court  
7 with limited powers within the superior court in each county  
8 may be established? Just precisely what is meant by  
9 functional division, both in 5.08 and 5.10.

10 DELEGATE MUDD: The only difference I think that  
11 was intended in the two provisions, Delegate Adkins, with  
12 respect to functional divisions was that with respect to  
13 the superior court, because there is a superior court in  
14 every county. The functional division would in all proba-  
15 bility be a county functional division, whereas with re-  
16 spect to the district court it might be a functional  
17 district to share the district load.

18 THE CHAIRMAN: Delegate Mudd, I don't believe  
19 your answer was responsive to the question as the Chair  
20 understood it. I understand the question directed to you  
21 was whether the term "functional divisions" as used in 5.08,





1 for instance, meant a division of the superior court estab-  
2 lished to perform a certain function.

3 DELEGATE MUDD: Yes.

4 THE CHAIRMAN: Was that your question, Delegate  
5 Adkins?

6 DELEGATE ADKINS: That is basically it. In  
7 other words, the concept is the court will be established  
8 to perform a function less than the general jurisdiction  
9 of other superior courts throughout the State.

10 DELEGATE MUDD: Yes; such as probate or juvenile,  
11 in that area.

12 THE CHAIRMAN: Any further questions?

13 Delegate Dukes.

14 DELEGATE DUKES: Under the functional division  
15 provision for district court could you also set up a  
16 functional division that would deal in the nature of small  
17 claims court, so the division dealt with informal rules,  
18 informal procedure, limited amount as well as category of  
19 type of claims?

20 DELEGATE MUDD: You mean functional division  
21 that was not bound by the rules of the district court?



1 DELEGATE DUKES: Many of our present peoples  
2 courts have relatively informal rules, so that a man who  
3 claims his neighbor owes him \$150 can try his own case.

4 Could you set up a division of the district  
5 court to do this?

6 DELEGATE MUDD: No. The functional division  
7 of the district courts would have to abide by the same  
8 rules within its limited function as the district courts.

9 THE CHAIRMAN: Delegate Mudd, as I understand  
10 the question of Delegate Dukes, it is two-fold. One, under  
11 your plan could a district court be set up so that a func-  
12 tion would be small claims, as distinguished from a type  
13 of case? That is the first question.

14 DELEGATE MUDD: Yes. I see no problem there.

15 THE CHAIRMAN: Second, the second part of his  
16 question was, could the court, under its rule making power,  
17 authorize the use of more informal procedures in such a  
18 small claims court?

19 DELEGATE MUDD: Offhand I would say no, but the  
20 rule making power possibly could so provide.

21 THE CHAIRMAN: Delegate Dukes.



1 DELEGATE DUKES: Would I conclude, if your  
2 answer in the negative is correct, there is no provision  
3 for such court under this article?

4 DELEGATE MUDD: No provision for what?

5 DELEGATE DUKES: For the small claims court  
6 with an informal system. Could there be none under this  
7 article?

8 DELEGATE MUDD: Absolutely yes, it could be.  
9 I am not prepared to say it would be operated under rules  
10 different from those of the court of which it was a func-  
11 tional division.

12 DELEGATE DUKES: Delegate Bamberger's last  
13 question, as I recall, dealt with whether or not the basic  
14 intention in having functional divisions as a function of  
15 rule making rather than legislative. You felt the courts  
16 were in better position to determine when a functional di-  
17 vision was necessary, is that right?

18 DELEGATE MUDD: Yes.

19 DELEGATE DUKES: And the Chair, I believe,  
20 stated a question in response to Delegate Willoner's  
21 inquiry about any difference if there was any between



1 judicial power under section 5.01 and judicial function,  
2 I suppose quasi-judicial body, administrative agency;  
3 my question is this: Could the legislature set up a body --  
4 take probate courts; you mentioned that -- can it set up  
5 a body which is called a court <sup>upon</sup> and/which is conferred  
6 commission or probate jurisdiction, has judges called pre-  
7 siding officers, judges appointed by the Governor, but has  
8 no function other than judicial in any reasonable sense,  
9 remove all probate functions from the judicial arm?

10 DELEGATE MUDD: I think the answer to that is  
11 no, because presumably it would be a conflict of jurisdic-  
12 tion there; if the legislature in the exercise of the  
13 power delegated to it here to prescribe jurisdictions of  
14 the four tier system prescribes probate jurisdiction in  
15 the superior court, that would be the end of it.

16 THE CHAIRMAN: Delegate Dukes.

17 DELEGATE DUKES: What is the effect of the  
18 article on the present tax court?

19 DELEGATE MUDD: It is not a court, as I under-  
20 stand it.

21 DELEGATE DUKES: What are its functions, other





1 than judicial?

2 DELEGATE MUDD: You mean the court operated  
3 out of the Department of Assessments and Taxation?

4 DELEGATE DUKES: The court is called a tax  
5 court, yes, sir.

6 DELEGATE MUDD: My understanding is it is  
7 not a court in our definition of it.

8 THE CHAIRMAN: Delegate Dukes.

9 DELEGATE DUKES: Am I not correct that in  
10 decisions -- perhaps the Chair can assist on this --  
11 decisions which dealt with quasi-judicial functions  
12 dealt for the most part with administrative agencies, where  
13 they were clearly quasi-non-judicial functions, for the most  
14 part regulatory, thinking of Federal Power Commission,  
15 Federal Communications, Security & Exchange Commission,  
16 Workmens Compensation Board, are these not different  
17 from courts like tax court, or the probate court created by  
18 the legislature, which are composed of former judges?

19 THE CHAIRMAN: If your question was directed  
20 to the Chair I would answer the distinction is not so much  
21 the one that you have just indicated, but rather the



1 distinction between an agency determining rights as between  
2 the State or a governmental unit, and a citizen, and the  
3 agency or court determining rights between citizen and  
4 citizen.

5 A zoning appeal board, for instance, is not a  
6 court.

7 DELEGATE DUKES: So that the determination  
8 would be that the legislature could create any court,  
9 call it what you will, which dealt with relationships be-  
10 tween the State and citizens, but could not create any such  
11 specialty court which dealt between citizen and citizen,  
12 is that correct?

13 THE CHAIRMAN: I wouldn't go quite that far;  
14 but then most generalities are difficult to reach.

15 DELEGATE DUKES: What I am trying to find out  
16 is what jurisdiction, if any, does the legislature have  
17 to create specialty bodies or courts that deal with problems  
18 of citizens and citizens - automobile accidents, family  
19 courts, probate, that sort of thing?

20 THE CHAIRMAN: Delegate Mudd.

21 DELEGATE MUDD: First it depends upon what



1 jurisdiction the legislature is going to prescribe for  
2 courts in the four-tier system.

3 DELEGATE DUKES: I didn't understand.

4 DELEGATE MUDD: It first depends on what juris-  
5 diction the legislature is going to prescribe for courts  
6 in the four-tier system.

7 DELEGATE DUKES: I am assuming that under  
8 5.01 all judicial power must be in the four-tier courts.

9 DELEGATE MUDD: Yes.

10 DELEGATE DUKES: I want to know what authority,  
11 if any, the legislature has to deal with this type problem  
12 outside of the four-tier court.

13 DELEAGTE MUDD: Quasi-judicial agency and admi-  
14 nistrative agency is the only way I can answer.

15 THE CHAIRMAN: I think the question was, to  
16 use Delegate Dukes illustration, under this article would  
17 it be competent for the legislature to set up a judicial,  
18 quasi-judicial agency not under the four-tier courts to  
19 try automobile negligence cases?

20 DELEGATE DUKES: It could give it minimal legis-  
21 lative authority to be quasi, but it would circumvent





1 the theory of rule making having control over functional  
2 divisions.

3 DELEGATE MUDD: It may be. I cannot answer  
4 that.

5 THE CHAIRMAN: Delegate Dukes, do you have  
6 a further question?

7 Delegate Clagett?

8 DELEGATE CLAGETT: Delegate Mudd, how many  
9 superior courts are contemplated under this article?

10 DELEGATE MUDD: One.

11 THE CHAIRMAN: Delegate Clagett.

12 DELEGATE CLAGETT: There will be only one  
13 superior court, and how many superior courts will there be  
14 in each county?

15 DELEGATE MUDD: There will be a division of  
16 the superior court in each county.

17 THE CHAIRMAN: Delegate Clagett.

18 DELEGATE CLAGETT: Where is the provision for  
19 that division?

20 DELEGATE MUDD: I think it is implicit in the  
21 arrangement with a judge of the superior court in each



1 county.

2 THE CHAIRMAN: Delegate Clagett.

3 DELEGATE CLAGETT: Is it not possible -- that  
4 would fall under section 5.08, would it not?

5 DELEGATE MUDD: Yes.

6 DELEGATE CLAGETT: Is it not possible under  
7 section 5.08 for there to be a superior court located in  
8 Annapolis with a resident superior court judge in each of  
9 the 24 counties who will have to come to Annapolis to  
10 sit, as will all of the persons who appear before that  
11 court or who are required to appear before that court?

12 DELEGATE MUDD: It may be possible, but it was  
13 a possibility that our committee did not envision.

14 THE CHAIRMAN: Delegate Clagett.

15 DELEGATE CLAGETT: My question is that it  
16 is the intent of section 5.08 that there shall be one  
17 superior court judge resident in each county who shall  
18 preside over a function of the superior court located in  
19 that county?

20 DELEGATE MUDD: A division of the superior court  
21 in that county.



1 THE CHAIRMAN: Delegate Clagett.

2 DELEGATE CLAGETT: Division, instead of func-  
3 tion?

4 THE CHAIRMAN: That is my interpretation, yes,  
5 sir.

6 THE CHAIRMAN: Delegate Malkus.

7 DELEGATE MALKUS: Mr. President, I have  
8 several questions.

9 First I would like to direct to the Chairman,  
10 or if the Chairman cannot answer it, to Delegate Bradshaw,  
11 I want to talk about generally along the same lines that  
12 Delegate Rybczynski talked about, how much is this going  
13 to cost?

14 As I understood Delegate Bradshaw -- I am not  
15 making a speech. I have to lay the groundwork of the  
16 question, qualify the witness -- as I understand it, he  
17 said if we put this thing in effect it will cost \$250,000.  
18 I want to ask Delegate Mudd or Delegate Bradshaw or the  
19 Chairman if he is serious in that answer. Either one may  
20 answer.

21 THE CHAIRMAN: Delegate Mudd.



1 DELEGATE MUDD: Yes, sir.

2 THE CHAIRMAN: Another question, Delegate  
3 Malkus? He answered "Yes, sir."

4 DELEGATE MUDD: The answer is it cost  
5 approximately \$250,000 to make all the judges full time  
6 and take over the functions of the district court under  
7 that basis than it is now costing.

8 THE CHAIRMAN: Delegate Malkus.

9 DELEGATE MALKUS: I have several more ques-  
10 tions, Mr. President. I had a hard time getting up.

11 How many judges now are receiving \$30,000 in  
12 the State of Maryland?

13 DELEGATE MUDD: I don't know.

14 DELEGATE MALKUS: Does Delegate Bradshaw  
15 know, then?

16 THE CHAIRMAN: Can you respond to the inquiry,  
17 Delegate Bradshaw?

18 DELEGATE BRADSHAW: Perhaps I can. The judges  
19 in Baltimore City, as I understand it, are receiving that  
20 salary. The judges in Prince Georges County are receiving  
21 \$27,500, plus \$2,500 quote, travel expenses, unquote;





1 which would make \$30,000. The judges in Montgomery  
2 County are paid \$27,000, but the attorney general  
3 has ruled they are entitled to be paid \$30,000.

4 I know of no other judges earning \$30,000.

5 THE CHAIRMAN: Delegate Malkus.

6 DELEGATE MALKUS: While Mr. Bradshaw is on his  
7 feet, how much would it cost, additionally cost, to pay  
8 every judge in the State of Maryland \$30,000?

9 Can you answer that question, Delegate Bradshaw?

10 DELEGATE BRADSHAW: Mr. Chairman, no, I can't  
11 answer that right now, on such short notice.

12 THE CHAIRMAN: Another question?

13 DELEGATE MALKUS: Yes, sir, I have some more  
14 questions.

15 Are you anticipating in your \$250,000 there  
16 might be a reduction in salary of any judge in the State  
17 of Maryland?

18 THE CHAIRMAN: Delegate Bradshaw.

19 DELEGATE BRADSHAW: The approximation made  
20 by Dr. Cooper was there would be no reduction in any  
21 judges' salary at the superior court level. The assumption



1 is, at least in our committee, and I think the assumption  
2 also was made by Dr. Cooper, that all judges would be  
3 paid at the present maximum rate enjoyed by the judges  
4 in metropolitan counties. They would all be paid \$30,000.

5 There are 70 circuit court judges at the present  
6 time.

7 On the other hand, there are several hundred  
8 minor court judges in the State of Maryland throughout the  
9 whole system. It is expected after the transitional period  
10 this would be very greatly reduced; that is, the number of  
11 those minor court judges would be very substantially re-  
12 duced. But of course their salaries would be very greatly  
13 increased over what would be the average at the present  
14 time.

15 THE CHAIRMAN: Delegate Malkus.

16 DELEGATE MALKUS: Mr. President, I know that  
17 Delegate Bradshaw is a very able man, served with him  
18 in the legislature. My next question to him is this:  
19 Could he give this broken down to me before we vote on  
20 this thing -- we are not going to vote on it tonight --  
21 so I can see how he arrives at this? I want to write this



1 thing in the record, how much it will cost.

2 THE CHAIRMAN: Delegate Bradshaw, Delegate Mal-  
3 kus asks whether it will be possible for you to obtain  
4 for him a breakdown of the figure of \$250,000 to show how  
5 much of it would be attributable to increase where neces-  
6 sary, the salary of superior court judges to the annual  
7 salary of \$30,000. Would that be possible?

8 DELEGATE BRADSHAW: Mr. Chairman, I doubt that  
9 would be possible. I have a tremendous amount of raw data  
10 here which has not been collated, and it would be, I  
11 would have to have the assistance of some statistician,  
12 or perhaps Dr. Cooper himself.

13 THE CHAIRMAN: The Chair will assign somebody  
14 to Delegate Bradshaw in an effort to get the information.

15 Do you have another question, Delegate Malkus?

16 DELEGATE MALKUS: I certainly do, Mr. President.  
17 As I understand it, then, I will have a complete breakdown  
18 as to how this is going to cost the State of Maryland only  
19 \$250,000 to put these first eleven sections into effect  
20 with a uniformity of salary.

21 THE CHAIRMAN: That is not what I said.





1 I said we would get for you the information as to how Dr.  
2 Cooper arrived at his figure of \$250,000; how much of it  
3 is attributable to the necessity of increasing superior  
4 court judges' salary to \$30,000.

5 DELEGATE MALKUS: Now, Mr. President --

6 THE CHAIRMAN: Delegate Malkus.

7 DELEGATE MALKUS: I ask you the question, or  
8 anybody else the question, how much is it going to cost over-  
9 all; and I would like to have that broken down.

10 THE CHAIRMAN: Delegate Bradshaw.

11 DELEGATE BRADSHAW: That is a more monumental  
12 undertaking than the first question, and I would have to  
13 appeal to the Chair for some substantial assistance.

14 THE CHAIRMAN: Delegate Malkus.

15 DELEGATE MALKUS: Mr. President, can we get  
16 that before the vote on this?

17 THE CHAIRMAN: I have no idea whether you can  
18 or not. I would be glad to have Delegate Bradshaw ask  
19 Dr. Cooper, or be glad to have Dr. Cooper talk to you.  
20 If the information is available, it will be made available  
21 to you.



1 Delegate Malkus.

2 DELEGATE MALKUS: Mr. President, I would  
3 also like to have some consideration to having this  
4 projected, because at the present rate of increase in  
5 judges -- that if we are going to judge the future by  
6 viewing the past, it won't be long before there will be  
7 more superior court judges in Maryland than there will be  
8 members of the General Assembly.

9 That s something I think, Mr. President, that  
10 this great body should take into consideration, overall  
11 cost.

12 I know it is easy to say \$250,000.

13 THE CHAIRMAN: This is a question period, Dele-  
14 gate Malkus.

15 DELEGATE MALKUS: All right, sir.

16 I guess Mr. President, I voted for this "gag"  
17 rule not knowing that I was voting for, but you told me --  
18 I believe anything you tell me -- that you would let me  
19 talk as much as I wanted to. (Laughter.)

20 THE CHAIRMAN: Not quite.

21 DELEGATE MALKUS: I think you will, Mr.



1 President. You are a great man.

2 Now, I would like to now talk to the Chairman  
3 and direct a question to him. I refer you, Mr. Chairman,  
4 to section 5.08. There shall be at least one superior  
5 court judge resident in each county. If I understand 6.10,  
6 it is very possible that there will not be a district  
7 court judge in each county. Am I right so far in my  
8 statement?

9 DELEGATE MUDD: Yes, sir; except the later de-  
10 cision is up to the legislature, not this committee or  
11 the Constitutional Convention.

12 DELEGATE MALKUS: Is it not true, Mr. Chairman  
13 that -- that is all we are talking about now, the Constitu-  
14 tion -- my statement is correct?

15 DELEGATE MUDD: Yes, sir.

16 DELEGATE MALKUS: Why is it more important to have  
17 a circuit court judge, as we know him, in every county,  
18 and not a peoples court or a trial magistrate in every  
19 county, when I will say 80 or 90 percent of the people  
20 that ever see the enforcement of law go before the lower  
21 court?



1 DELEGATE MUDD: We do not say it is. We leave  
2 it to the legislature to prescribe the districts and the  
3 number of district court judges.

4 THE CHAIRMAN: Any further questions, Delegate  
5 Malkus?

6 DELEGATE MALKUS: Yes, sir. Why do you dis-  
7 criminate then in favor of the superior court against the  
8 district court when in my opinion both are equal?

9 DELEGATE MUDD: We did not discriminate.  
10 We are providing for a new court when we provided the  
11 district court, and in our wisdom we are leaving it to the  
12 wisdom of the legislature to say how many district courts  
13 and how many district court judges. We are mandating in  
14 this Constitution what the legislature in its wisdom has  
15 heretofore provided, namely for a superior court judge in  
16 every county.

17 THE CHAIRMAN: Delegate Malkus.

18 DELEGATE MALKUS: Yes, sir.

19 My next question is this: Is it not true  
20 we are not creating a new court; we are just reorganizing  
21 a court that is already in existence?





1 DELEGATE MUDD: You mean by that the district  
2 court?

3 DELEGATE MALKUS: Yes, sir.

4 DELEGATE MUDD: Substantially, yes.

5 DELEGATE MALKUS: My question again to you is  
6 this: Why are you saying each county shall have a circuit  
7 court or a superior court, which very few people see,  
8 and a judge, rather resident judge, and not have a peoples  
9 court judge as we know it, or magistrate as we know it, or  
10 we will know it under the district court?

11 DELEGATE MUDD: Because the present Constitution  
12 and present law requires a superior court judge in each  
13 county and we are leaving to the wisdom of the legislature  
14 to determine whether there should be a district court  
15 judge in every county.

16 THE CHAIRMAN: Any further questions?

17 Delegate Mason.

18 DELEGATE MASON: Mr. Chairman, did you in answer  
19 to Delegate Chabot's question state that under Article  
20 5.01 the legislature could not create a tribunal to hear  
21 automobile injury cases.



1 DELEGATE MUDD: If you define tribunal as a  
2 court, I would say yes.

3 THE CHAIRMAN: Delegate Mason.

4 DELEGATE MASON: Are you suggesting we call  
5 it something other than a court that they could create such  
6 an agency?

7 DELEGATE MUDD: There are existing facilities  
8 called courts that are not exercising a judicial power.

9 THE CHAIRMAN: Delegate Mason.

10 DELEGATE MASON: Would a court or tribunal  
11 that would hear personal injury cases, automobile injury  
12 cases, come under section 5.01, judicial power?

13 DELEGATE MUDD: Offhand, I would say yes.

14 THE CHAIRMAN: Delegate Mason.

15 DELEGATE MASON: How would that differ from  
16 a court or tribunal created by the legislature to  
17 hear personal injuries connected with employment?

18 DELEGATE MUDD: If I understand your question,  
19 it would be identical; the legislature would then be  
20 attempting to set up a separate court to try the same  
21 type of case within the same jurisdiction that it had



1 previously prescribed to the superior court.

2 THE CHAIRMAN: Delegate Mason.

3 DELEGATE MASON: Would this article preclude  
4 the Workmen's Compensation Commission from functioning?

5 DELEGATE MUDD: No.

6 THE CHAIRMAN: Delegate Mason.

7 DELEGATE MASON: Don't they hear personal in-  
8 jury cases that are work-related and work-connected?

9 DELEGATE MUDD: Yes, but not automobile  
10 cases. You spoke of automobile cases a while ago, I  
11 thought.

12 DELEGATE MASON: I was trying to throw an  
13 analogy between automobile injury cases and work-connected  
14 cases.

15 DELEGATE MUDD: The answer is that this article  
16 would not prevent the Workmen's Compensation Commission  
17 from continuing to function.

18 THE CHAIRMAN: Delegate Mason.

19 DELEGATE MASON: Could you explain the differ-  
20 ence between the function performed by the Workmen's  
21 Compensation Commission and the functions that could be





1 performed by a legislatively created commission to hear  
2 automobile accident cases?

3 DELEGATE MUDD: Workmen's Compensation Commis-  
4 sion is non-judicial, quasi.

5 THE CHAIRMAN: Delegate Mason, do you have a  
6 further question?

7 DELEGATE MASON: I don't think the answer is  
8 responsive. At least it doesn't answer completely my  
9 question.

10 I want to know the difference between an auto-  
11 mobile injury case and the difference between a personal  
12 injury case on the job.

13 DELEGATE MUDD: May I yield to Delegate Hender-  
14 son?

15 THE CHAIRMAN: Delegate Henderson.

16 DELEGATE HENDERSON: If I may attempt to answer  
17 the question, it seems to me its distinction is pretty  
18 clear. When the legislature, back about 1914, set up  
19 the Workmen's Compensation Commission, it first took  
20 causes of accidents which had hitherto been tried in court  
21 and set up an insurance scheme whereby people injured at



1 work without any question of tort liability or contribu-  
2 tory negligence, or any of these other things was given the  
3 right to recover from a State agency an amount which was  
4 measured in fixed amounts, not by verdict before this  
5 Commission. That was a non-judicial commission, and  
6 set up not by turning over previous court work to a dif-  
7 ferent court, but by putting it on an entirely different  
8 theory and basis.

9 I think that is really the explanation.

10 THE CHAIRMAN: Delegate Mason, do you have  
11 a further question?

12 DELEGATE MASON: I am satisfied with the answer.

13 THE CHAIRMAN: Thank you.

14 Are there any further questions?

15 Delegate Grant.

16 DELEGATE GRANT: Delegate Mudd, getting back  
17 to district courts again, am I understanding correctly  
18 there will be no de novo proceedings as you now have  
19 them at trial magistrates if you take them up to circuit  
20 court?

21 THE CHAIRMAN: In what court, Delegate Grant?



1 DELEGATE GRANT: The trial in the district  
2 court will be a final trial, and you will not have a de novo  
3 trial in the superior court.

4 DELEGATE MUDD: That is what we would contem-  
5 plate, but it would depend upon the action of the legis-  
6 lature.

7 THE CHAIRMAN: Delegate Grant.

8 DELEGATE GRANT: The next question would be,  
9 assuming that you did have a final trial in the district  
10 court, where would the appellate jurisdiction then lie?  
11 Would it go up to the intermediate appeal, or would  
12 you have appellate jurisdiction in superior court over  
13 district court proceedings?

14 DELEGATE MUDD: It would depend upon the wisdom  
15 of the legislature in describing jurisdiction. It could  
16 provide for appellate jurisdiction either way.

17 DELEGATE GRANT: No appellate jurisdiction in  
18 superior court? I wondered if you contemplated it would  
19 go all the way to the intermediate appellate court.

20 DELEGATE MUDD: That would appear to be inevi-  
21 table, the inevitable result.



1 THE CHAIRMAN: I am not sure I understand the  
2 earlier answer. Did you say that section 5.07 does  
3 not authorize the legislature to prescribe appellate juris-  
4 diction in the superior court?

5 DELEGATE MUDD: Yes.

6 THE CHAIRMAN: As I read it it did, in lines 50  
7 and 51: "such other jurisdictions as prescribed."

8 DELEGATE MUDD: I was wrong, Delegate Grant;  
9 sorry. There could be appellate jurisdiction from the  
10 district court to the superior court.

11 THE CHAIRMAN: Delegate Grant.

12 DELEGATE GRANT: A second question on the juris-  
13 diction of the commissioners: Would you envision they would  
14 be able to issue anything like a writ of replevin, or  
15 would that have to go to the district court?

16 DELEGATE MUDD: Within the restrictions detailed  
17 there I would say that would have to go to the district  
18 court.

19 THE CHAIRMAN: Delegate Grant.

20 DELEGATE GRANT: Another question: Would you,  
21 although each of those articles indicate the court as a





1 whole throughout the State will be composed of a body  
2 of judges, presumably each judge assigned to that court,  
3 could you envision the judges would beable to trans-  
4 late between levels?

5 THE CHAIRMAN: Your word --

6 DELEGATE GRANT: Translate between levels.

7 THE CHAIRMAN: Transfer.

8 DELEGATE GRANT: Transfer from one level to  
9 another.

10 THE CHAIRMAN: Delegate Mudd.

11 DELEGATE MUDD: That is within the rule making  
12 power of the court of appeals.

13 THE CHAIRMAN: Delegate Grant.

14 DELEGATE MUDD: Temporary assignments of judges,  
15 yes.

16 DELEGATE GRANT: You do not feel their language  
17 precludes a superior courtjudge from sitting in  
18 district court by the fact that said superior court  
19 shall be composed of, and district courts shall be composed  
20 of?

21 DELEGATE MUDD: In my judgment, no.



1 THE CHAIRMAN: Delegate Grant.

2 DELEGATE GRANT: I can't make out clearly, but  
3 I presume that this article will or will not continue  
4 distinction between law and equity?

5 THE CHAIRMAN: I didn't hear that. -- will  
6 continue what?

7 DELEGATE GRANT: -- will continue distinction  
8 between law and equity?

9 DELEGATE MUDD: Possibly, yes.

10 THE CHAIRMAN: Delegate Grant's question was  
11 whether the article continues the distinction. I take  
12 it he means whether it necessarily continues.

13 DELEGATE GRANT: Not necessarily.

14 THE CHAIRMAN: In other words, we could go to  
15 a unified system such as the federal system?

16 DELEGATE MUDD: Yes.

17 THE CHAIRMAN: Delegate Grant.

18 DELEGATE GRANT: Another question I had was,  
19 you indicated that probably the Department of Probation  
20 and Parole would come under the judiciary. Would you  
21 also visualize departments of corrections would come



1 under the judicial?

2 I would indicate the prisons and reformatories  
3 and so forth.

4 THE CHAIRMAN: They are presently under the  
5 Executive Branch, you understand.

6 DELEGATE GRANT: That is correct.

7 DELEGATE MUDD: I would say not.

8 THE CHAIRMAN: Any further questions, Delegate  
9 Grant?

10 DELEGATE GRANT: I would say there was a report  
11 distributed to us indicating that there should be a combi-  
12 nation of the Department of Probation and Parole and the  
13 Department of Correction in order to give a start-to-finish  
14 treatment.

15 You have just indicated you would favor part  
16 being under the judicial. Do I understand you want part  
17 under the judicial and part under the executive?

18 DELEGATE MUDD: The only discussion we have had  
19 in that area before was whether the Probation Department  
20 might appropriately be within the administrative responsi-  
21 bility of the courts. My answer to that was yes.





1 The correctional in my judgment, at this time, just  
2 off the top of my head, would be no; but I stand to be  
3 corrected.

4 THE CHAIRMAN: Delegate Grant.

5 DELEGATE GRANT: I have one further question.

6 Could you give me in round figures the number  
7 of circuit court cases per year, as opposed to the number  
8 of trial magistrate and peoples court cases per year, just  
9 in round figures?

10 DELEGATE MUDD: I do not have that information  
11 available here at the desk, Delegate Grant, but we have had  
12 a wealth of information furnished our committee, and  
13 if I may, I will see that you get it.

14 THE CHAIRMAN: Delegate Grant, I think you  
15 might obtain the information from the Convention library,  
16 which contains the last report of the Administrative Office  
17 of the Courts, which would give you the answer as to the  
18 Superior Court, which also contains the report of the Bar  
19 Association Committee to which I referred, which would give  
20 you the information as to trail magistrates, peoples courts,  
21 et cetera.



1 DELEGATE GRANT: Thank you.

2 THE CHAIRMAN: Delegate Scanlan.

3 DELEGATE SCANLAN: Mr. Chairman, Mr. Mudd  
4 has been at this now for a considerable period of time.  
5 There will be a great number of additional questions.  
6 I respectfully suggest we accord him the same privilege  
7 we accorded --

8 THE CHAIRMAN: I think, Delegate Scanlan, he  
9 would like to sit down and rest for more than that few  
10 moments. I hope the questions to him are very few.

11 DELEGATE SCANLAN: I hope so, but if not, I  
12 hope we can give him that privilege.

13 THE CHAIRMAN: Delegate Marion.

14 DELEGATE MARION: Mr. Chairman, I ask this  
15 in the context of the adoption this morning of the local  
16 government article, which drew a distinction between the  
17 word "law" and the words "public general law." Is it not  
18 correct it is the intention of the Committee on the  
19 J udicial Branch in using the word "law" throughout our  
20 recommendation that we mean by that "public general law"?

21 DELEGATE MUDD: That is entirely correct.



1           Being mindful of that discussion this morning,  
2 we may require some further consideration of that and  
3 possible amendment of this article.

4           THE CHAIRMAN: Delegate Macdonald.

5           DELEGATE MACDONALD: Mr. Chairman, calling your  
6 attention to sections 5.08 and 5.10, what were the  
7 disadvantages, in the committee's thinking, of allowing  
8 functional divisions in these two courts to be established  
9 by either rule or by law?

10          DELEGATE MUDD: You mean making it optional or  
11 concurrent with the legislature and with the courts?

12          DELEGATE MACDONALD: Precisely. Especially in  
13 view of the last section whereby you provide that when the  
14 General Assembly has the power and when the court has the  
15 power by rule that the last enactment shall prevail.

16          DELEGATE MUDD: Yes.

17          DELEGATE MACDONALD: Especially in view of the  
18 history whereby there has been very little conflict  
19 between General Assembly and Court of Appeals in its  
20 rule making authority.

21          THE CHAIRMAN: Delegate Clagett, do you still



1 have a question?

2 DELEGATE MUDD: I didn't answer Delegate Mac-  
3 donald.

4 THE CHAIRMAN: Sorry; I thought the last  
5 was an observation rather than question.

6 DELEGATE MACDONALD: I was clarifying.

7 DELEGATE MUDD: Our view in response to that was  
8 this was peculiarly within the authority that we thought  
9 might more appropriately be exercised by the court in its  
10 rule making power, and that is a standing committee that  
11 is always available to consider matters of this nature; and  
12 these functional divisions might be more usefully availed  
13 of and made better to accommodate the needs by rule making  
14 power than through a public general law.

15 THE CHAIRMAN: Delegate Macdonald.

16 DELEGATE MACDONALD: Do you see any real dis-  
17 advantages in giving the General Assembly the same  
18 power by law?

19 DELEGATE MUDD: No. I just think it is more  
20 flexible and can be more readily brought to accommodate  
21 the need through rule making power; but personally I have





1 no serious objection to concurrent power in that field.

2 THE CHAIRMAN: Delegate Clagett.

3 DELEGATE CLAGETT: Delegate Mudd, was it  
4 discussed by your committee or in the committee that  
5 when a superior court judge was not present in his county  
6 but had been assigned, let us assume for the moment,  
7 to some other jurisdiction to relieve a caseload there  
8 that a district court judge located in that same county  
9 or in that district would be available to sign orders  
10 such as injunctive orders or probate matters, or things of  
11 that kind? If so, how would that be accomplished?

12 DELEGATE MUDD: It could be accomplished by  
13 two means. One, the legislature should prescribe concur-  
14 rent jurisdiction at the two-tier level. Then recourse  
15 might be had to the judge of either court.

16 On the other hand, the power of the court by  
17 rule to provide for assignment of judges, which, as I  
18 understand it, is contemplated to be either laterally or  
19 from a lower or higher tier; it can be accomplished in either  
20 or in both ways.

21 THE CHAIRMAN: If there are no further questions -



1 Delegate Koss.

2 DELEGATE KOSS: Mr. Chairman, I apologize  
3 for prolonging your ordeal. Also, we are going back to  
4 an area that has been discussed.

5 I would like to know what is the critical  
6 element in the term "judicial power" that would prohibit  
7 the General Assembly from eroding the court system as  
8 it is outlined here?

9 DELEGATE MUDD: If I was capable of answering  
10 that, it would take a long time to answer it; but the  
11 judicial power under this proposed article is vested in  
12 the four-tier court system with the jurisdiction being pre-  
13 scribed by the legislature, so within the limitations and  
14 restrictions imposed by the several sections. For instance,  
15 the only appellate jurisdiction can be prescribed by the  
16 legislature to the Court of Appeals, and it can have  
17 original jurisdiction only as provided in this Constitu-  
18 tion.

19 The conception of a unified uniform four-  
20 tier court structure is that all of the judicial power of  
21 the State shall be vested in those four courts, and that



1 court, such as an orphans court, can be set up by the legis-  
2 lature to exercise jurisdiction that might be prescribed  
3 to one of those four courts.

4 Is that helpful at all to you?

5 THE CHAIRMAN: Delegate Gilchrist.

6 DELEGATE GILCHRIST: One short question, if I  
7 may.

8 Would this article assume the abolition of  
9 courts sitting on municipal ordinance questions only, as  
10 for example, a municipal magistrate who tries only matters  
11 arising under municipal ordinances?

12 DELEGATE MUDD: You mean exercising a judicial  
13 function for a municipality?

14 DELEGATE GILCHRIST: Correct.

15 DELEGATE MUDD: Yes.

16 DELEGATE GILCHRIST: This would be abolished?

17 DELEGATE MUDD: Tell me such a court. Where?

18 THE CHAIRMAN: Delegate Gilchrist.

19 DELEGATE GILCHRIST: In the City of Cumberland,  
20 for example, there is a magistrate treating only with vio-  
21 lations of City ordinances.





1  
2 DELEGATE MUDD: No, I do not think it would  
3 interfere with that.

4 THE CHAIRMAN: That might or might not be true  
5 under the provisions of the article on local government  
6 adopted this morning.

7 DELEGATE MUDD: I cannot answer for that.

8 THE CHAIRMAN: If there are no further questions  
9 the Chair will call on Delegate Johnson to present the  
10 minority report with reference to Sections 5.01 to 5.11  
11 and give Delegate Mudd a much needed rest.

12 Delegate Johnson.

13 DELEGATE JOHNSON: Mr. Chairman.

14 THE CHAIRMAN: Delegate Johnson.

15 DELEGATE JOHNSON: Mr. Chairman, I would first  
16 like to begin by inquiring whether or not it would be both  
17 right and proper for me to comment on behalf of the  
18 minority with respect to any intervening sections, namely  
19 5.01 and 5.11, if there are in fact amendments to any  
20 intervening sections pending or if it is all right I will  
21 go ahead and do that, but perhaps we have an alternative



1 and I should address myself to 5.01 only.

2 The Chair is not aware of any proposed amend-  
3 ments to any sections in this group other than 5.01 and  
4 5.11. Are there any proposed?

5 Delegate Grant?

6 DELEGATE GRANT: I have a suggested amendment  
7 to 5.08 and another amendment to 5.11 and an amendment  
8 to 5.10.

9 THE CHAIRMAN: Thank you.

10 Delegate Johnson, you may proceed.

11 DELEGATE JOHNSON: Mr. Chairman, fellow dele-  
12 gates, I must assume that you have had opportunity to look  
13 at the minority report JB-1, but perhaps because of some  
14 of the questions that were asked of the questions that  
15 were asked of the majority committee chairman it may  
16 be necessary for me to explain in somewhat additional de-  
17 tail than I had intended with respect to our amendment to  
18 Section 5.01.

19 I think perhaps it is important to look at Sec-  
20 tion 5.01 inasmuch as we propose an amendment to it.  
21 You will note the word "exclusively" is used in Section

The first part of the paper is devoted to a general discussion of the problem of the origin of life. It is shown that the problem is one of the most important and most difficult in the history of science. The author then proceeds to a detailed examination of the various theories which have been proposed to explain the origin of life. These theories are divided into two main classes: the "chemical" theories and the "biological" theories. The "chemical" theories are based on the idea that life is a purely chemical phenomenon, and that it can be explained in terms of the laws of chemistry. The "biological" theories are based on the idea that life is a purely biological phenomenon, and that it can be explained in terms of the laws of biology. The author then discusses the evidence in support of each of these theories, and finally concludes that the "chemical" theories are more convincing than the "biological" theories.

1 5.01 and you will note it does not provide for the legis-  
2 lature to create any other courts, any other special  
3 courts we submit by law.

4 What the minority suggests, I want to be per-  
5 fectly frank in indicating to you that I do not consider  
6 this a guts issue, the minority simply feels that this  
7 body ought to deliberate and consider whether or not it  
8 wants to permit the legislature to provide any other courts  
9 that would not be inconsistent with the unified judicial  
10 court system.

11 As a matter of fact, we had considered wording  
12 our amendment so that the legislature could provide for  
13 "other courts not inconsistent with the unified judicial  
14 court system", but we decided that that perhaps was not  
15 very good constitutional draftsmanship and we abandoned it.

16 So our amendment in effect will say that the  
17 word "exclusively" should be deleted from Section 5.01  
18 and we should add to that section "and other courts that  
19 may be provided by law."

20 As indicated in the minority report, the reason  
21 for this is to permit the legislature to create whatever

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1 additional special courts future needs may call for. We  
2 had various proposals asking us to set up the constitu-  
3 tional courts, other constitutional courts such as a Tax  
4 Court, Court of Claims; I do not believe we had a proposal  
5 on labor courts but courts of that nature.

6 In my opinion, the majority felt that by insert-  
7 ing the language we would prefer to see in the Constitution  
8 it would destroy the unified court system. We are confi-  
9 dent this is not the case. I have already indicated to  
10 you it is not our intention. The reason we are certain  
11 this would not be the case is because Sections 5.09 deal-  
12 ing with the jurisdiction of District Court and Section  
13 5.07 dealing with the jurisdiction of Superior Courts spe-  
14 cifically provide that the jurisdiction in those two  
15 levels shall be uniform through the state.

16 We submit it is absolutely impossible to destroy  
17 this uniformity inasmuch as it is already provided for  
18 the Constitution.

19 Together with that, may I add that certainly  
20 one of the most venerated documents in this nation is  
21 our U. S. Constitution. We all recognize also this





1 document has served ably as a model for numerous other  
2 constitutions.

3 The veneration of the minority in this particular  
4 point is not due to the fact that this outline of govern-  
5 ment was framed by a body of both dedicated and able men,  
6 but rather because it has served admirably as a framework  
7 for a responsible government. The fact that only 25  
8 amendments have been added to it in over a century and  
9 three-quarters indicates full well the flexibility of  
10 the document. An important factor in keeping this in  
11 mind is seldom does the Constitution absolutely prohibit  
12 this action.

13 The organization of the Judicial Branch is indica-  
14 tive of that. Only one court is specifically authorized  
15 by the U. S. Constitution. I believe Delegate Chabot  
16 commented upon this. This of course leaves the Congress  
17 the task of filling out the judicial system for the nation.

18 The minority, as we indicated previously, is  
19 not at all unhappy with the idea of a four-tier court  
20 system and on the contrary, may I reiterate we indeed  
21 support. One may argue quite logically this has offered

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1 great flexibility for the State Judiciary, but are we  
2 absolutely certain this system will be sufficiently flexi-  
3 ble to handle the future needs of the Judicial Branch.

4 Our amendment will allow for modifications in  
5 the court organization without endangering the idea of  
6 a unified system.

7 The overwhelming majority of state constitutions  
8 currently in force provide for the creation by law of  
9 varying kinds of courts. One may also argue that a few  
10 states limit this authority, I believe less than four.

11 Quite frankly, even a couple of constitutions  
12 prohibit the creation of any new courts. I believe that  
13 occurs in only two constitutions.

14 The weight of precedents is on our side, it seems  
15 here we should be concerned with the principle of flexi-  
16 bility rather than just rely on the majority of what  
17 other states enforce. It is on this principle of flexibil-  
18 ity that we wish to remove from our Constitution the limi-  
19 tation of judicial powers to only those courts named in  
20 the document.

21 Mr. Chairman, that is essentially, together with



1 the minority report, my remarks on Section 5.01.

2 THE CHAIRMAN: Are there any questions of the  
3 minority spokesman with respect to Section 5.01 to Sec-  
4 tion 5.11? If not, Delegate Bradshaw.

5 DELEGATE BRADSHAW: I would like to ask Dele-  
6 gate Johnson whether or not his proposal would permit  
7 continuation of the present system of appointing magis-  
8 trates and judges of lower courts.

9 DELEGATE JOHNSON: To that I will answer abso-  
10 lutely not. If we are going to have a unified District  
11 Court, which I believe we all understand to be the lowest  
12 court, on the lowest level, this would seem to me to  
13 clearly do away with the Magistrate Court system as we have  
14 it today. In other words, in the minority view it would  
15 be impossible, I submit unconstitutional, to provide for  
16 a major straight type court in some small county and not  
17 provide for it in another county. We do not think this  
18 can be done when you have a unified judicial system.

19 In other words, if your District Court system  
20 is going to be uniform throughout the state and if that  
21 is in fact the lowest court on the level from the





1 standpoint of jurisdiction, then certainly they are going  
2 to start with the very smallest cases and work up.  
3 Quite frankly, we do not think this can happen and we do  
4 not think the legislature would do this even if they could.

5 THE CHAIRMAN: Delegate Bradshaw.

6 DELEGATE BRADSHAW: One further question.

7 I note that you say in your proposed change  
8 that you would provide such other courts as may be provided  
9 by law. How would you propose that those judges be ap-  
10 pointed?

11 DELEGATE JOHNSON: Frankly, we cannot answer that  
12 because we have not arrived at how the judges are going to  
13 be appointed under this Constitution.

14 Delegate Bradshaw, I would say when the Commit-  
15 tee of the Whole or Convention decides that, I can better  
16 answer your question.

17 THE CHAIRMAN: Delegate Bradshaw.

18 DELEGATE BRADSHAW: Can you tell us what you  
19 are proposing in that respect?

20 DELEGATE JOHNSON: The minority report is very  
21 clear on how we propose that other courts in the united

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1 united judicial court system would be established, and I  
2 would say to that that under our proposal all the judges  
3 would be established the same way as they would be estab-  
4 lished under the majority report proposal, if in fact  
5 their proposal is adopted by this body.

6 THE CHAIRMAN: Delegate Henderson.

7 DELEGATE HENDERSON: Under your proposal would  
8 you suggest that the legislature had the authority to  
9 continue Orphans' Court in its present form?

10 DELEGATE JOHNSON: No.

11 THE CHAIRMAN: Any other questions?

12 DELEGATE JOHNSON: Reluctantly, Delegate Hender-  
13 son, but no.

14 THE CHAIRMAN: Delegate Henderson.

15 DELEGATE HENDERSON: You say they could prescribe  
16 by law, could not the legislature prescribe them as addi-  
17 tional courts.

18 DELEGATE JOHNSON: I guess there is a possibility,  
19 Delegate Henderson, they could but as you know, they would  
20 have to do so throughout the entire state. I think it is  
21 very unlikely that the legislature is going to establish



1 a unified Orphans' Court system throughout the entire state.

2 DELEGATE HENDERSON: They have it throughout the  
3 state now?

4 DELEGATE JOHNSON: Yes.

5 DELEGATE HENDERSON: Why could they not?

6 DELEGATE JOHNSON: I do not believe they would be-  
7 cause of the commentary by this body.

8 DELEGATE HENDERSON: You admit they could?

9 DELEGATE JOHNSON: I believe it is possible.

10 THE CHAIRMAN: Delegate Schneider.

11 DELEGATE SCHNEIDER: Under the present Consti-  
12 tution is there any provision for establishment of such  
13 other courts as provided by law?

14 DELEGATE JOHNSON: I believe, you can correct me  
15 on this, that our present Constitution provides for many  
16 varied courts and it spells out the number and nature of  
17 courts in detail. It is my understanding our present  
18 Constitution does not specifically provide for other  
19 courts. However, it is interesting to know when a consti-  
20 tutional amendment was made for the creation of the inter-  
21 mediate Appellate Court that that constitutional amendment



1 carried with the power to the legislature to create other  
2 intermediate Appellate Courts or similar intermedicate  
3 Appellate Courts, I believe. I do not have the wording  
4 in front of me, but I believe that is the case.

5 THE CHAIRMAN: Delegate Schneider.

6 DELEGATE SCHNEIDER: We provide this judicial  
7 article for judicial structure which includes selection,  
8 tenure, and removal of judges. If we are to establish  
9 other courts legislatively, would they in any way be sub-  
10 ject to the possibility of removal as required, hopefully,  
11 by the judicial article which we will adopt and will they  
12 be subjected, this question has already been asked, to the  
13 selection process or will it be possible to establish an  
14 extra judiciary somewhat isolated from this structure we  
15 establish in the Constitution?

16 THE CHAIRMAN: Delegate Johnson.

17 DELEGATE JOHNSON: I believe any new judgeship  
18 that may or may not be created by any new court would fall  
19 right into line with the judicial article with respect  
20 to the appointment and removal, if my memory serves me  
21 correctly, with respect to appointment, removal and tenure,





1 we used the term "judge" and did not further define it to  
2 judge of the Superior Court, Court of Appeals, District  
3 Court, et cetera. I think that would take care of the  
4 problem.

5 THE CHAIRMAN: Delegate L. Taylor.

6 DELEGATE L. TAYLOR: Delegate Johnson, you made  
7 a statement about labor courts. Do you feel there might  
8 be a need for a labor court in the State of Maryland?

9 DELEGATE JOHNSON: I think that is possible, but  
10 that certainly is alone not the reason why we propose  
11 this. The truth of the matter is we think it possible for  
12 a number of other special courts that may need to be cre-  
13 ated in the future. We cannot predict. We have indicated  
14 some other special courts, I believe labor court was one,  
15 because that was a suggestion given to us.

16 DELEGATE L. TAYLOR: You said under the committee  
17 recommendations that special courts like the labor court  
18 or family court or combination of landlord-tenant court  
19 would not be created under this committee recommendation;  
20 are you saying this?

21 DELEGATE JOHNSON: No, we think any administrative



1 or quasi-judicial court such as housing court or tax  
2 court as we have it now, or Workmen's Compensation Com-  
3 mission, in our view these courts could probably be con-  
4 tinued.

5 However, we cannot predict future needs wherein  
6 it may be that some of the quasi-judicial courts or admin-  
7 istrative courts as we know them today, it may be neces-  
8 sary for those types of courts to become courts of record,  
9 actually part of our judicial system. The only thing we  
10 suggest, and as provided in 30 other state constitutions,  
11 is that the legislature in its wisdom and to promote  
12 flexibility should be permitted to create other courts,  
13 if any, as needed.

14 THE CHAIRMAN: Delegate Taylor.

15 DELEGATE L. TAYLOR: You were saying the commit-  
16 tee recommendation is not geared to the future needs of  
17 the people of the state, legal needs, courts.

18 DELEGATE JOHNSON: No, I would not put it in  
19 that term. I think that it is just not flexible enough.  
20 I think the majority members feel that by providing for  
21 functional differentials they will take care of whatever



1 problem may develop. The minority feels this may or may  
2 not be the case and just by adding a couple words we  
3 could provide for future generations for the creation of  
4 other special courts.

5 THE CHAIRMAN: Delegate Cicone.

6 DELEGATE GICONE: Mr. Johnson, wouldn't the  
7 judiciary be in a much better position to know what  
8 courts are needed by their functional divisions than the  
9 legislature? Couldn't the legislature be pressured  
10 by certain areas to create certain courts and we might  
11 get into the area we are already by various courts being  
12 created perhaps where they are not needed or needed  
13 in a smaller degree and could this be taken care of by the  
14 functional divisions.

15 DELEGATE JOHNSON: I will try to answer your  
16 question this way: Functional divisions will certainly  
17 take care of any problem wherein the jurisdiction is the  
18 same.

19 I might comment a bit on this because there was  
20 a lot of discussion concerning the functional divisions  
21 of the superior court and the district court.  
I might say that the reason that we provided for functional  
divisions as you know as a member of our committee,  
I am very pleased to note this was an amendment offered





1 by a member of the minority, that the  
2 reason we provided for functional divisions was to permit  
3 some flexibility in particularly urban areas where it  
4 would be important in the committee's view to have a civil  
jurisdiction and a criminal jurisdiction.

5 You can do that in Baltimore City and some other  
6 urban areas but you need not do that perhaps in Talbot  
7 County or some other small county.

8 DELEGATE JOHNSON: So although you can answer  
9 part of the problem by functional division, in our view  
10 you could not take care of the possibility of the need for  
11 creation of a tax court unless you provided for tax court  
12 jurisdiction in every district court or superior court  
13 in the state. That would be the same way with the court  
14 of claims. It would be the same way with a labor court,  
15 because if you are going to have a uniform judicial court  
system, then the jurisdiction has to be uniform.

16 We are in favor of that, but we think these  
17 special courts ought to be provided for if they are needed  
18 and that we should not tie the legislature's hands in  
creating them if the need arises.

19 THE CHAIRMAN: Delegate Hargrove.

20 DELEGATE HARGROVE: Delegate Johnson, by  
21

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2 removing the word "exclusively from Section 5.01, can  
3 you tell me whether or not that in effect gives the  
4 General Assembly concurrent authority with the judiciary  
5 so far as the court system is concerned; that is, I  
6 think you suggested we remove the word "exclusively" and add  
7 "such other courts as may be established by the General  
8 Assembly."

9 I am asking you whether or not in effect by removal  
10 of that word you in effect give the General Assembly the  
11 authority to create any court they want to establish,  
12 whatever rule, or whatever procedure they so desire for  
that particular court, is that correct?

13 DELEGATE JOHNSON: No, let me answer your  
14 question this way: When we suggested removing the word  
15 "exclusively" we just mean it is consistent with our  
16 position that the legislature should be able to provide  
17 whatever other special courts may be needed.

18 As a matter of fact, as I indicated at the outset,  
19 we would be satisfied that the language would be "and  
20 such other courts that are not inconsistent with the uni-  
21 fied judicial court system." That is our position. I  
will make it plain as I can, but that is our position.



1  
2 THE CHAIRMAN: Delegate Hargrove.

3 DELEGATE HARGROVE: My question is: Are there  
4 any other powers which the judicial system has which the  
5 General Assembly would have by virtue of their ability  
6 to create additional courts?

7 "Exclusively", as far as I can understand it,  
8 means all powers of the judiciary are in a court system  
9 of four tiers. When you remove "exclusively," you remove  
10 some powers. What powers are you removing, or are  
11 there any powers you are removing and giving to the  
12 General Assembly by the elimination of that word?

13 DELEGATE JOHNSON: I do not think we are  
14 removing any powers. It is my understanding, if my  
15 recollection is correct, there is a Maryland case in  
16 point that held that although our present Constitution  
17 does not provide the word "exclusively," that by spelling  
18 out the number and names of the courts that is in fact  
19 what it means that it is an exclusive court. So that at  
20 best the word is unnecessary in my opinion.

21 DELEGATE HARGROVE: The present constitution  
does not contain the language "shall create any such



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3 courts as the General Assembly may desire." Every court  
4 in the State of Maryland is a constitutional court, as  
5 I understand it, is that correct?

6 DELEGATE JOHNSON: That is partially correct.  
7 There is wording to that effect, however, with respect  
8 to the creation of other intermediate appellate courts,  
9 I believe.

10 DELEGATE HARGROVE: Within our constitution.

11 THE CHAIRMAN: Delegate Raley, do you have a  
12 question?

13 DELEGATE RALEY, do you have a question?

14 DELEGATE RALEY: Delegate  
15 Johnson, the thing that bothered me here, I know what you  
16 are trying to get at. I do not like to see that the  
17 legislature is forever excluded from being creative.  
18 For instance, somebody mentioned a family court. Maybe  
19 the judicial system by rule would not do anything about  
20 it. I think that, and the General Assembly which has the  
21 pressures of the people --

THE CHAIRMAN: Do you have a question, Delegate  
Raley?

DELEGATE RALEY: I have a question. I was trying





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3 to see if it could be that the functional Divisions could  
4 be divided as divided now or as will be prescribed  
5 by rule only by the court, but could it be added also by  
6 law?

7 DELEGATE JOHNSON: That is a very good point,  
8 Delegate Raley. Perhaps the Committee of the Whole would  
9 be interested in knowing that an amendment along the  
10 lines you mentioned was short of a majority, but it was  
11 supported as I understand it by the Entire minority  
12 plus. We originally suggested that the section with respect  
13 to functional divisions, take 5.08, we suggested this  
14 section should read, the last sentence, "Functional  
15 divisions of superior court may be established in any  
16 county prescribed by rule or by law."

16 The majority did not accept that we did not file  
17 a minority report on this item because we believe that the  
18 judiciary should have certain procedural type exclusive  
19 rule-making powers.

19 If that is a valid concern of yours and of  
20 the Committee of the Whole, it can easily be corrected.  
21 I am sure it is a valid concern of yours or you would



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3 not have mentioned it, but if it is in fact a concern  
4 of the Committee of the Whole, an amendment providing  
5 for the establishment of functional divisions by rule or  
6 by law could be easily provided for and perhaps adopted  
7 by this body.

8 THE CHAIRMAN: The Chair does not want to prolong  
9 this session unduly. I would like to conclude this phase  
10 of it if possible. I will recognize Delegates Armor and  
11 Clagett in succession. If there are further questions,  
12 we will go over to tomorrow. I should add also if either  
13 of these delegates has a series of questions, I would  
14 prefer not to recognize them.

15 DELEGATE ARMOR: Just one, I am referring to  
16 Section 5.11 on Commissioners. Your suggestion is that  
17 they be appointed and prescribed by law in that appointment.  
18 Then they are going to work in the district court.

19 Should one of these commissioners not be  
20 competent with that joint responsibility there, how would  
21 you dispose of them, or eliminat them, if they couldn't  
do their job properly?

DELEGATE JOHNSON: Hopefully since our proposal



1 would provide for their selection to be established by  
2 law, we would hope it would be under some merit  
3 system. We understand, of course, regardless of that,  
4 that would be controlled by the Judge even though they  
5 may be appointed or selected--appointed is the correct  
6 word, in a manner prescribed by law.

7 We see no problem in this area. There is a  
8 case throughout the country. It is the case with respect  
9 to elected clerks of court on the superior court  
10 level. The consensus of testimony before us has been  
11 that the concurrence has worked Extremely well and many  
12 judges would prefer it not be abandoned and many judges  
13 would prefer not to be involved in this matter of selecting  
14 commissioners and being responsible for rejecting certain  
15 ones and matters of this nature.

16 THE CHAIRMAN: Delegate Clagett.

17 DELEGATE CLAGETT: It is entirely possible  
18 and in all probability the General Assembly will provide  
19 by law for the special courts such as tax courts or any  
20 other kind of court that would be contemplated within your  
21 phrase, "other courts" being added to 5.01, is it not?





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3 DELEGATE JOHNSON: So long as they remained an  
4 administrative, or quasi-judicial or quasi-administrative  
5 agency, I believe the legislature would continue to do so,  
6 yes.

7 DELEGATE CLAGETT: Under Sections 5.07 and 5.09,  
8 if they become more than quasi-judicial, could they not  
9 be provided for and placed under either Superior Court  
10 or District Court and then those courts by the functional  
11 divisions give them specification or name?

12 DELEGATE JOHNSON: They could, but you must  
13 remember that in that event the jurisdiction would have  
14 to be uniform throughout the state. So that take a  
15 case where you may want to have a tax court in Baltimore  
16 City, for instance, if you made it a functional division  
17 of the Superior Court or the District Court, you would also  
18 have to extend that jurisdiction to every other superior  
19 court and district court throughout the state.

20 THE CHAIRMAN: Delegate Clagett.

21 DELEGATE CLAGETT: The mere fact that they have  
the jurisdiction would not compel them to exercise it  
until it became necessary to do so, however, would it?



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DELEGATE JOHNSON: You are absolutely right.

THE CHAIRMAN: Delegate Miller, do you have a question?

DELEGATE B. MILLER: Yes.

THE CHAIRMAN: Hold it until tomorrow. The Chair recognizes Delegate Powers.

DELEGATE POWERS: Mr. Chairman, I move the Committee of the Whole rise and report to the Convention it has not concluded its consideration of Committee Report No. JB-1.

(Whereupon, the motion was seconded)

THE CHAIRMAN: All in favor signify by saying Aye; contrary, No. The ayes have it. So ordered.

(The mace was replaced by the Sergeant at Arms.)

(Whereupon, at 6:13 o'clock p.m., the Committee of the Whole rose, and the Convention reconvened.)

THE PRESIDENT: The Convention will please come to order.

On behalf of the Committee of the Whole, the Chair reports it has had under consideration Committee



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3 Recommendation JB-1, that it still has it under consideration  
4 and desires leave to sit again.

5 Will all delegates who were absent at roll call  
6 this afternoon and desire to indicate their presence do  
7 so now.

8 The Clerk will recall the additional roll call.  
9 Are there any announcements by Committee Chairman?

10 DELEGATE KIEFER: Mr. President, I remind members  
11 of Personal Rights and Preamble Committee of the meeting  
12 tonight at 8:00 o'clock.

13 THE PRESIDENT: Delegate Morgan.

14 DELEGATE MORGAN: Mr. President, the Committee  
15 on the Executive Branch will meet immediately following  
16 adjournment of this session to consider a proposal of  
17 Delegate Robie relating to the merit system.

18 We will meet Again tomorrow morning at 9:00  
19 a.m. to consider a proposal by Delegate Maurer relating  
20 to the merit system and proposal by Delegate Lloyd Taylor  
21 and then a proposal by Delegate Grant.

Mr. Grant's proposal was re-referred to us from  
the Committee on Suffrage and Elections.



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3 I hope all members of the Committee will attend as  
4 promptly as possible.

5 THE PRESIDENT: Delegate Penniman.

6 DELEGATE PENNIMAN: Mr. President, there will  
7 be a meeting of the Committee on Style at 7:45 this  
8 evening.

9 THE PRESIDENT: Any other announcements?  
10 Delegate Gallagher?

11 DELEGATE GALLAGHER: Mr. President, there will  
12 be a meeting of the Committee on the Legislative Branch at  
13 8:00 o'clock tonight at 9:00 o'clock tomorrow morning and  
again tomorrow night at 8:00.

14 THE PRESIDENT: Any other announcements by  
15 Committee Chairmen? If not the Chair recognizes Delegate  
16 Wheatley.

17 DELEGATE WHEATLEY: Mr. President, there will be  
18 a meeting of the General Provisions Committee during  
luncheon recess tomorrow.

19 THE PRESIDENT: Delegate Schloeder.

20 DELEGATE SCHLOEDER: Mr. Chairman, a point of  
21 personal privilege. Some colleagues of mine on the floor





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3 who were not members of the Bar have asked me to express  
4 their thanks and mine to Delegates Mudd and Johnson  
5 for their presentation this afternoon and also to say  
6 how happy we were to have been able to attend a meeting  
7 of the Maryland Bar Association and we are certainly  
8 looking forward to future meetings of thisbody.

9 Thank you.

10 THE PRESIDENT: Delegate Mitchell.

11 DELEGATE MITCHELL: Mr. President, some of us  
12 did not get copies of the recommendation of the committee.  
Will they be distributed by tomorrow?

13 THE PRESIDENT: Which committee?

14 DELEGATE MITCHELL: Judicial Branch Committee.

15 THE PRESIDENT: You did not have it last week?  
16 It was distributed quite a while ago. It is not in your  
book on the desk.

17 DELEGATE MITCHELL: Not in the book.

18 THE PRESIDENT: Will any delegates who do not  
19 have Committee Report JB-1, Committee Memorandum  
20 JB-1, stand.

21 Apparently the omission is in one area.



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3 DELEGATE MITCHELL: I think Delegate Miller  
4 got one.

5 THE PRESIDENT: We will see they are supplied  
6 this evening. They are available. Any other announcements?

7 The Chair recognizes Delegate Powers.

8 DELEGATE POWERS: Mr. President, I move we  
9 adjourn until 10:00 o'clock tomorrow morning.

10 (Whereupon, the motion was seconded)

11 THE PRESIDENT: All in favor signify by saying  
12 Aye; contrary, No.

13 The ayes have it; so ordered.

14 (Whereupon, at 6:15 o'clock p.m., the  
15 Convention adjourned.)  
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